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<p>1 Friday, 2 November 2018</p> <p>2 (10.01 am)</p> <p>3 MR POON CHUK HUNG, JASON (on former oath in Punt)</p> <p>4 (All answers given via simultaneous interpreter</p> <p>5 except where otherwise specified)</p> <p>6 Questioning by THE COMMISSIONERS</p> <p>7 CHAIRMAN: Mr Poon, just before we start, two questions, if</p> <p>8 we may.</p> <p>9 A. (In English) Yes.</p> <p>10 CHAIRMAN: First, during the course of your earlier</p> <p>11 evidence, you made mention of the fact that you had</p> <p>12 an interest, if we recall correctly, in a bar fitting</p> <p>13 company. Is that correct?</p> <p>14 A. My company. It's my company.</p> <p>15 (In English) I use English. My company, my company</p> <p>16 of China Technology, also undertaking sub-contract works</p> <p>17 of rebar fixing.</p> <p>18 CHAIRMAN: All right. So, through that, have you had any</p> <p>19 experience in overseeing and managing bar fitting</p> <p>20 exercises?</p> <p>21 A. (In English) Yes.</p> <p>22 CHAIRMAN: As such -- and we come to the second question --</p> <p>23 A. (In English) Yes.</p> <p>24 CHAIRMAN: -- would it surprise you, if you came on to site</p> <p>25 when bar fixing work was being done, to see a cutter,</p>	<p>1 MS CHONG: Good morning.</p> <p>2 A. Good morning.</p> <p>3 Q. May I refer you to D228. Just now, we were talking</p> <p>4 about the machines.</p> <p>5 A. (In English) Yes.</p> <p>6 Q. What kind of machine is this?</p> <p>7 A. (In English) I would call it hydraulic disc cutter.</p> <p>8 Q. Hydraulic disc cutter?</p> <p>9 A. Mmm.</p> <p>10 Q. How about the one the workers were holding at D227?</p> <p>11 A. (In English) Exactly the same of that one.</p> <p>12 Q. Hydraulic cutter?</p> <p>13 A. (In English) Yes.</p> <p>14 Q. May I suggest to you this is not in fact hydraulic</p> <p>15 cutter but hand-held cutter or grinder; do you agree?</p> <p>16 CHAIRMAN: Sorry, perhaps you could help me there, because</p> <p>17 I thought a hydraulic cutter was a particular type of</p> <p>18 cutter, and it may be hand-held. It's a bit like saying</p> <p>19 a diesel car as opposed to an electric; they are both</p> <p>20 cars, you get small ones and big ones, but one has</p> <p>21 a different power source from the other. I'm probably</p> <p>22 wrong, but it may just assist me. Thank you.</p> <p>23 MS CHONG: My understanding is that hydraulic cutter, the</p> <p>24 bar should be placed on top of the blade, the cutter</p> <p>25 itself, but for those hand-held grinder or cutter, the</p>
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<p>1 a cutting machine?</p> <p>2 A. (In English) Yes. I have to define the cutting machine.</p> <p>3 CHAIRMAN: I'm talking about a machine that cuts reinforcing</p> <p>4 bars.</p> <p>5 A. (In English) Cutting reinforcement bars in Hong Kong</p> <p>6 construction site is quite usual. Normally, we will use</p> <p>7 flame cutting -- flame cutting, fire, F-L-A-M-E -- or</p> <p>8 using the grind cutting, grinding machines, but very</p> <p>9 unusual to use the hydraulic disc cutter.</p> <p>10 COMMISSIONER HANSFORD: And would those grinding machines or</p> <p>11 disc cutters that you might normally use, would they be</p> <p>12 hand-held?</p> <p>13 A. (In English) Yes.</p> <p>14 CHAIRMAN: So would it be correct then -- and this is</p> <p>15 a wrap-up question -- to say that you wouldn't have been</p> <p>16 surprised, in respect of the contract that we're talking</p> <p>17 about now, to see hand-held cutting machines on site?</p> <p>18 A. (In English) Yes.</p> <p>19 CHAIRMAN: What did surprise you was what?</p> <p>20 A. (In English) Was using the next generation of the</p> <p>21 hydraulic cutting, and cutting the threading sections.</p> <p>22 CHAIRMAN: So that is what your evidence is?</p> <p>23 A. (In English) Yes.</p> <p>24 CHAIRMAN: Thank you very much.</p> <p>25 Cross-examination by MS CHONG</p>	<p>1 bar was placed underneath the cutter.</p> <p>2 So that, if we can see from this photo, D228, this</p> <p>3 should be a hand-held cutter rather than hydraulic</p> <p>4 cutter.</p> <p>5 CHAIRMAN: All right.</p> <p>6 MS CHONG: Because of the position the bar was placed.</p> <p>7 CHAIRMAN: Thank you. That helps me greatly.</p> <p>8 Mr Poon, do you understand the question in that</p> <p>9 context?</p> <p>10 A. (In English) I understand the question.</p> <p>11 (Via interpreter) I disagree.</p> <p>12 MS CHONG: Do you agree that for hydraulic cutter, how it</p> <p>13 operates was to exert pressure onto the bar so that it</p> <p>14 would break; that's how it operates?</p> <p>15 A. (In English) It is another type of machine.</p> <p>16 Q. And because how it operates, when breaking the rebars,</p> <p>17 it would deform the threads; do you agree?</p> <p>18 A. (In English) You are talking about hydraulic cutter?</p> <p>19 Q. Hydraulic cutter.</p> <p>20 A. (In English) Your understanding of hydraulic cutter?</p> <p>21 Q. My understanding of the hydraulic cutter.</p> <p>22 A. (In English) Okay. If it is -- I imagine you are</p> <p>23 talking about another type of hand-held hydraulic</p> <p>24 cutter, for the cutting of rebar. However, I'm not</p> <p>25 talking about this. I am talking about exactly the type</p>

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<p>1 that's shown on the picture of D228 and D227.</p> <p>2 Q. So you are talking about this type of hydraulic cutter?</p> <p>3 A. (In English) Yes.</p> <p>4 Q. Do you know the serial number of this type?</p> <p>5 A. I don't know the serial number but it is we call it</p> <p>6 "red M" -- R-E-D -- "red M", the brand name, yes,</p> <p>7 (Chinese spoken), red M.</p> <p>8 Q. May I refer to your police statement. You gave a police</p> <p>9 statement regarding the incident that you saw on</p> <p>10 22 September 2015, and the police statement, the Chinese</p> <p>11 version is D762.</p> <p>12 A. (In English) Yes.</p> <p>13 Q. And the English version, D765.4.</p> <p>14 A. (In English) Yes.</p> <p>15 Q. I will read out the English version but you can refer to</p> <p>16 the Chinese version because that's in your direct</p> <p>17 language.</p> <p>18 A. (In English) Okay.</p> <p>19 Q. Paragraph 10:</p> <p>20 "I carried out inspection of Hung Hom Station</p> <p>21 starting at 4 pm on 22 September 2015. At around</p> <p>22 6.17 pm during this inspection, I again saw two Chinese</p> <p>23 men" -- follow the description -- "wearing royal blue,</p> <p>24 orange and yellow coloured polo T-shirts as well as</p> <p>25 reflective vests bearing the logo of Leighton using</p>	<p>1 version.</p> <p>2 So my question is: did you witness them cutting</p> <p>3 a bundle of ten-odd rebars wrapped together and cut</p> <p>4 together at one time?</p> <p>5 A. (In English) No. They are cutting piece by pieces,</p> <p>6 either cutting those pieces loosely laid on the floor --</p> <p>7 Q. If that's the case, why --</p> <p>8 A. (In English) -- or they take particular one bar from</p> <p>9 a bundle of the wrapped bundles of threaded bar and then</p> <p>10 cut one by one, on that particular bundle.</p> <p>11 Q. If that's your meaning to the police, why did you sign</p> <p>12 on this witness statement, agreeing that you told the</p> <p>13 police that you witnessed the workers cutting the</p> <p>14 rebars, either one rebar at one time or a bundle of</p> <p>15 ten-odd rebars wrapped together and cut at one time?</p> <p>16 Why did you sign this police statement if your meaning</p> <p>17 was a bit different from what was represented in this</p> <p>18 witness statement?</p> <p>19 A. Now, if you think that in terms of interpretation of the</p> <p>20 text there could be different views, but my</p> <p>21 understanding is totally different from yours, my</p> <p>22 apologies, because that's what I meant. In Hong Kong or</p> <p>23 around the world there is not another hand-held machine</p> <p>24 that can cut more than five rebars in one go.</p> <p>25 Q. The Chinese says:</p>
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<p>1 hydraulic cutter to cut short the threaded heads of</p> <p>2 rebars in bay C1-4 and bay C1-5 of the construction</p> <p>3 site."</p> <p>4 Then follow this:</p> <p>5 "They used hydraulic cutter to cut short threaded</p> <p>6 heads of rebars, each time cutting short either one</p> <p>7 rebar or a bundle of 10 or more rebars wrapped</p> <p>8 together."</p> <p>9 Pausing here.</p> <p>10 A. (In English) Yes.</p> <p>11 Q. You seem to be saying that you had witnessed a bundle of</p> <p>12 ten or more rebars wrapped together being cut at one</p> <p>13 time?</p> <p>14 A. In the Chinese and English version, bundle of ten or</p> <p>15 more rebars, in Chinese it seems that there is</p> <p>16 a translation problem, because I said before, they cut</p> <p>17 bundle by bundle. That's what I said before.</p> <p>18 Q. I have also read the Chinese version but I do not think</p> <p>19 your interpretation is correct. The Chinese is even</p> <p>20 more plain in saying that each time -- you witnessed</p> <p>21 them cutting each time either cutting one bar, or each</p> <p>22 time they wrapped ten-odd rebars together in one bundle</p> <p>23 and cut at one time.</p> <p>24 Now, the Chinese version is even more plain and</p> <p>25 clear. There is no misunderstanding in the Chinese</p>	<p>1 "(Via interpreter) They used hydraulic cutter to cut</p> <p>2 either one bar at a time or a bundle of ten or more</p> <p>3 rebars at one time."</p> <p>4 This is clear enough that you actually meant that</p> <p>5 you saw them either cut one rebar at one time, or they</p> <p>6 cut a bundle of ten-odd rebars at one time using this</p> <p>7 machine, so-called hydraulic cutter, (Chinese spoken);</p> <p>8 is that correct?</p> <p>9 A. I do not agree with your interpretation. What I meant</p> <p>10 was I was explaining the photo, I saw this phenomenon.</p> <p>11 Q. If you are saying that you are --</p> <p>12 COMMISSIONER HANSFORD: Sorry, could we have a pause</p> <p>13 between -- I want to get the interpretation before your</p> <p>14 next question, please.</p> <p>15 MS CHONG: Sorry.</p> <p>16 COMMISSIONER HANSFORD: It's okay now.</p> <p>17 MS CHONG: You said you are describing what you saw from the</p> <p>18 photos, but it seems that we did not see any bundle of</p> <p>19 rebars being cut and placed together. The most we could</p> <p>20 see is just one single photo showing somebody was doing</p> <p>21 something.</p> <p>22 A. Yes, we can't see it on the photo.</p> <p>23 Q. So there was nothing for you to illustrate there, in</p> <p>24 paragraph 10, using this description, "one bundle of</p> <p>25 ten-odd rebars being cut together"; right?</p>

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<p>1 A. Now, from the photo, yes, it cannot be illustrated or 2 shown. 3 Q. Yes. The question is, the hydraulic cutter you refer to 4 in the photo, D228, does it have the capacity to cut 5 a bundle of ten-odd rebars at one time? 6 A. (In English) No, cannot. 7 Q. So each time it can only cut one rebar? 8 A. (In English) One, or at most two. 9 Q. Or at most two? 10 A. (In English) It depends on the diameter, diameter of the 11 rebar. 12 Q. How much time does it take to cut each rebar? 13 A. (In English) I saw it about 20 to 30 seconds, for T40. 14 T40. 15 Q. 20 to 30 seconds, and you yesterday told us that there 16 were two hydraulic cutters purchased by Leighton at the 17 site; right? 18 A. I found ... 19 (Via interpreter) The first time I saw one cutter 20 and then subsequently I saw two cutters. 21 Q. So at most? 22 A. (In English) At most two. 23 Q. Two? 24 A. (In English) I saw, I witnessed. 25 Q. You saw? And also you heard foremen from Leighton told</p>	<p>1 A. Yes. 2 Q. I am puzzled here because, according to the evidence of 3 workers of Fang Sheung, it took 30 seconds to screw in 4 one rebar. 5 A. Mmm. 6 Q. And according to their evidence, if we believe them, 7 they say it took 1.2 to 2 minutes to cut rebar using the 8 ordinary hand-held grinder or cutter. Now, if that's 9 the case, it would cost about 2 minutes to 2.5 minutes 10 to install one cut rebar, right, if we calculate that 11 way, after you cut the rebar and then you install by 30 12 seconds? 13 A. How did you arrive at that? Can you please explain that 14 in simple terms? 15 Q. My calculation is very poor. Let's take it slowly. 16 Under ordinary circumstances, it takes about 30 seconds 17 to screw in one rebar? 18 A. (In English) Screw a normal, without any problem. 19 Q. Normal, yes. On the first day of the hearing, we 20 actually saw a witness from Intrafor demonstrating how 21 to screw in the rebar. 22 A. Mmm. 23 Q. And it takes less than ten seconds to screw in under 24 perfect situation. If you want to try, we can try it 25 again.</p>
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<p>1 you that they purchased two hydraulic cutters? 2 A. (In English) Yes. 3 CHAIRMAN: Did he say two or did he just say -- 4 A. (In English) I did, I did, I did. Maximum two, I did. 5 CHAIRMAN: Did the foreman say to you he had purchased two? 6 A. (In English) The foreman didn't. The foreman -- 7 CHAIRMAN: No, that's the point. 8 A. (In English) I witnessed two. The foreman didn't 9 specify the quantity. 10 CHAIRMAN: No. That was your evidence earlier. 11 MS CHONG: Yes. So to cut rebars for one minute, it will 12 only cut, at most, four rebars, is it? 13 A. (In English) Two. 14 Q. One minute? 15 A. (In English) Two. 16 Q. Two rebars for one machine? 17 A. (In English) Yes. 18 Q. So for two machines it will only cut four rebars? 19 A. (In English) Yes. If two machines working together, 20 yes. 21 Q. Now, yesterday -- on Day 7, I think, when you were asked 22 as to what advantage the parties would gain by cutting 23 threaded rebars, you were unable to answer until at the 24 last moment you said to save the labour cost of 25 Fang Sheung?</p>	<p>1 CHAIRMAN: Hang on a second. I don't necessarily accept 2 that, because what we were shown was a very short piece 3 of bar into a coupler, whereas on the site you've 4 probably got a much longer piece of bar, already sitting 5 or in some way affixed to the kind of caging that's 6 already been erected. 7 So it would not be so easy. 8 MS CHONG: Yes. That's right. The demonstration we saw on 9 the first day, it took less than ten seconds, I actually 10 counted, to screw in. 11 CHAIRMAN: Yes. 12 MS CHONG: But at the site situation, I imagine it would 13 take longer, and if we believe what the workers of 14 Fang Sheung say, it took about 30 seconds to completely 15 screw in one rebar. 16 CHAIRMAN: Yes. 17 MS CHONG: So it takes three more times than the one we've 18 seen in this hearing, because the situation is more 19 difficult at the site. 20 CHAIRMAN: Yes, if well aligned. 21 MS CHONG: Yes, if well aligned. 22 CHAIRMAN: If they are slightly out of alignment, there 23 might have to be a bit of knocking and pushing and 24 shoving. 25 MS CHONG: But we are talking about normal --</p>

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<p>1 CHAIRMAN: Yes.</p> <p>2 MS CHONG: We are talking about there is no damage to the</p> <p>3 coupler, the normal situation.</p> <p>4 So, if we believe what Fang Sheung workers say, it</p> <p>5 took 30 seconds to screw in one normal rebar to a normal</p> <p>6 coupler, right, 30 seconds.</p> <p>7 According to your evidence, it took about 20 to</p> <p>8 30 seconds to cut one rebar.</p> <p>9 A. (In English) Yes.</p> <p>10 Q. So, instead of cutting the rebar, why don't you just</p> <p>11 screw in the rebar into the coupler and just save time?</p> <p>12 This is my first question.</p> <p>13 A. (In English) Can I have one by one?</p> <p>14 Q. Maybe you get back to this question after I ask you.</p> <p>15 According to the Fang Sheung workers' evidence, it</p> <p>16 takes 1.5 to 2 minutes to cut one rebar using their</p> <p>17 machine. Now, Fang Sheung, according to your evidence,</p> <p>18 does not have that hydraulic cutter, right?</p> <p>19 A. (In English) Mmm, they are using different machine.</p> <p>20 Q. They use that very outdated grinder?</p> <p>21 A. (In English) Fang Sheung is admitting that? Fang Sheung</p> <p>22 Labour using another type of machine to cut the threaded</p> <p>23 bars on site?</p> <p>24 Q. No, I'm just putting question to you to work out your</p> <p>25 version, whether it's feasible or possible that people</p>	<p>1 an entirely properly threaded rebar.</p> <p>2 MS CHONG: Yes. If the rebar is cut, then it would not</p> <p>3 fully screw into the coupler.</p> <p>4 CHAIRMAN: That's right.</p> <p>5 MS CHONG: But still it takes time to feed into the coupler.</p> <p>6 CHAIRMAN: Yes.</p> <p>7 MS CHONG: So my question is not focusing on whether it's</p> <p>8 fully screwed in but whether it would actually save time</p> <p>9 to cut the rebar and then to put it into the coupler, as</p> <p>10 what this witness said previously.</p> <p>11 CHAIRMAN: Right.</p> <p>12 Perhaps I could put it this way: would you agree,</p> <p>13 Mr Poon, that if you have a properly aligned coupler,</p> <p>14 it's only going to take about 30 seconds, maybe a little</p> <p>15 bit longer, to screw in the rebar to that properly</p> <p>16 aligned coupler? If, however, you were to decide</p> <p>17 systematically to cut all the threads, you would be</p> <p>18 doubling your work, because you would have to cut the</p> <p>19 threads, and to some degree or another you would have to</p> <p>20 fit the cut rebar against or slightly into the coupler?</p> <p>21 A. (In English) Mmm. Agree.</p> <p>22 CHAIRMAN: So why would you be doubling your work?</p> <p>23 Would that be correct?</p> <p>24 MS CHONG: Yes. I am grateful, Chairman.</p> <p>25 A. My observation and understanding is that cutting and</p>
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<p>1 would engage in this kind of activity.</p> <p>2 Just listen to my question.</p> <p>3 A. (In English) Okay.</p> <p>4 Q. If Fang Sheung worker have to cut a rebar using this</p> <p>5 hand-held cutter, it would take them 1.5 to 2 minutes to</p> <p>6 cut one rebar using that hand-held grinder or cutter;</p> <p>7 right?</p> <p>8 A. (In English) Yes. I'm listening.</p> <p>9 Q. So add up that 30 seconds' screw-in time. For each cut</p> <p>10 rebar to be properly -- to be installed into a coupler,</p> <p>11 it would take 2 to 2.5 minutes; right?</p> <p>12 A. Mmm.</p> <p>13 Q. So it would mean they have to spend four to five times</p> <p>14 more effort in doing this?</p> <p>15 A. Mmm.</p> <p>16 CHAIRMAN: Sorry, I do apologise; I'm cutting across you.</p> <p>17 It was not my understanding that if you cut a rebar,</p> <p>18 that you would then screw it fully in necessarily.</p> <p>19 MS CHONG: Yes.</p> <p>20 CHAIRMAN: The purpose was that if you've cut the thread,</p> <p>21 all you've got to screw in then is maybe two threads or</p> <p>22 so, to make it --</p> <p>23 MS CHONG: Yes, but it still --</p> <p>24 CHAIRMAN: That would take a bit of time, but I don't know</p> <p>25 that it would take the time to fully screw in</p>	<p>1 screwing in, the latter scenario, may not be undertaken</p> <p>2 by Fang Sheung workers. So that's why I said</p> <p>3 Fang Sheung saved some cost. In my evidence, I didn't</p> <p>4 pinpoint Fang Sheung at all.</p> <p>5 MS CHONG: Thank you very much for saying this. Now you say</p> <p>6 that the cutting had nothing to do with Fang Sheung;</p> <p>7 right?</p> <p>8 A. (In English) In my witness.</p> <p>9 Q. Yes. So you now say that -- or to be fair to you, you</p> <p>10 always say that it was not Fang Sheung's worker who did</p> <p>11 this, right, cutting?</p> <p>12 A. I didn't say categorically it was not Fang Sheung.</p> <p>13 I never mentioned the name Fang Sheung in all these.</p> <p>14 Q. Let me refer you to your witness statement. In your</p> <p>15 witness statement, D33 --</p> <p>16 A. (In English) Yes.</p> <p>17 Q. -- paragraphs 73 and 74 --</p> <p>18 A. (In English) Yes.</p> <p>19 Q. -- you said this -- paragraph 73 first:</p> <p>20 "Throughout the whole process, according to what was</p> <p>21 reported to me by employees of China Tech or what I saw</p> <p>22 myself on the Hung Hom Station construction site, it was</p> <p>23 staff members of Leighton who were cutting the threaded</p> <p>24 rebars."</p> <p>25 Then follows paragraph 74:</p>

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<p>1 "On page 36 of the MTRC report ..."</p> <p>2 Then you summarise what Fang Sheung workers said</p> <p>3 there, and then the final bit of this paragraph:</p> <p>4 "As far as I am concerned, I have never seen any</p> <p>5 staff member of Fang Sheung cutting the threaded rebars.</p> <p>6 Employees of China Tech also did not report to me of any</p> <p>7 staff members of Fang Sheung having cut the threaded</p> <p>8 rebars."</p> <p>9 This is --</p> <p>10 A. (In English) Okay.</p> <p>11 Q. -- under the heading of "C6. Summary", after you had</p> <p>12 put in so many incidents of what you saw and what you</p> <p>13 heard, and you give this summary, that it was not</p> <p>14 Fang Sheung who is doing this --</p> <p>15 A. (In English) I abide by this.</p> <p>16 Q. So now you agree that it was not your case all the time</p> <p>17 that Fang Sheung workers were cutting the rebars? It</p> <p>18 was always your case that the Leighton staff were</p> <p>19 cutting; was that your case? Let me just --</p> <p>20 A. Let me put it --</p> <p>21 Q. -- know your position first. Was that your case that</p> <p>22 all the time it was the staff of -- Leighton workers who</p> <p>23 were cutting the rebars and not the workers of</p> <p>24 Fang Sheung? I want to --</p> <p>25 A. (In English) Because I also explain ...</p>	<p>1 Q. This is the first description.</p> <p>2 A. (In English) Yes.</p> <p>3 Q. And the second description is in the middle:</p> <p>4 "Photos 1-3 showed a Chinese man wearing royal blue,</p> <p>5 orange and yellow coloured polo T-shirts as well as</p> <p>6 reflective vests bearing the logo of Leighton ..."</p> <p>7 A. Mmm.</p> <p>8 Q. So you actually saw the logo of Leighton there?</p> <p>9 A. Mmm.</p> <p>10 Q. And they were wearing royal blue T-shirts, royal blue,</p> <p>11 orange and yellow polo T-shirts?</p> <p>12 A. (In English) Yes. The T-shirts have three colours.</p> <p>13 It's a combination of three colours.</p> <p>14 Q. Yes. And then you also said that that was the uniform</p> <p>15 worn by the persons who were cutting the rebar at that</p> <p>16 time; right?</p> <p>17 A. (In English) Yes. I'm exactly describing and suspecting</p> <p>18 the guys cutting the rebars are wearing that kind and</p> <p>19 that description of uniform, leading to me that they are</p> <p>20 Leighton staff.</p> <p>21 Q. I see. You did not even enquire whether they were from</p> <p>22 Leighton or from Fang Sheung at that time, did you? Is</p> <p>23 that your evidence?</p> <p>24 A. (In English) Sorry, I didn't.</p> <p>25 Q. You didn't?</p>
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<p>1 (Via interpreter) Well, I made my judgment based on</p> <p>2 the type of clothing of the workers. So that's how it</p> <p>3 came about in my conclusion that it was Leighton staff.</p> <p>4 Q. Okay. So according ...</p> <p>5 A. I heard that somebody took Leighton's uniforms to wear,</p> <p>6 so that raises some doubts on my part.</p> <p>7 Q. (Chinese spoken). Yes. So what you said is according</p> <p>8 to the uniform, you then think it was Leighton's workers</p> <p>9 who did it?</p> <p>10 A. Yes.</p> <p>11 Q. May I refer you to your police witness statement, just</p> <p>12 now, the two we referred to, D762 and D765.4.</p> <p>13 A. (In English) Okay.</p> <p>14 Q. On that occasion, you said that you took photos of the</p> <p>15 workers --</p> <p>16 A. (In English) Yes.</p> <p>17 Q. -- when they were doing all this?</p> <p>18 A. (In English) Yes.</p> <p>19 Q. And you actually describe them, describe their uniform.</p> <p>20 A. (In English) Described by their uniforms.</p> <p>21 Q. The uniform you described the workers were wearing at</p> <p>22 that time, cutting the rebar, were someone "wearing</p> <p>23 royal blue, orange and yellow coloured polo T-shirts as</p> <p>24 well as reflective vests bearing the logo of Leighton".</p> <p>25 A. (In English) Yes.</p>	<p>1 A. (In English) I didn't.</p> <p>2 Q. Did you enquire what they were doing at that time?</p> <p>3 A. (In English) I can't remember.</p> <p>4 Q. You can't remember?</p> <p>5 A. (In English) I can't remember exactly the conversation</p> <p>6 with them.</p> <p>7 Q. Now, you were suspecting someone was cutting rebar to</p> <p>8 undermine public safety, and that was one of the only</p> <p>9 two occasions that you saw people cutting rebars. And</p> <p>10 now you are telling us that you could be mistaken as to</p> <p>11 their identity because you did not enquire as to --</p> <p>12 because you only rely on the uniform and you did not</p> <p>13 enquire as to their identity; is this your evidence?</p> <p>14 A. Well, there was no such speculation in my witness</p> <p>15 statement. I just described clearly what I saw at that</p> <p>16 time.</p> <p>17 Q. Yes. So you did not make any enquiries, any</p> <p>18 confirmation, right, as to their identity, as to what</p> <p>19 they were doing at that time?</p> <p>20 A. (In English) Yes.</p> <p>21 Q. And by this observation, you make a generalisation as to</p> <p>22 they were cutting these rebars at a wholesale scale,</p> <p>23 systematically; right? Is this your case?</p> <p>24 A. In my witness statement, I didn't mention wholesale</p> <p>25 scale, widespread, industrial, et cetera.</p>

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<p>1 Q. But this was one of the two incidents you rely on in 2 this Inquiry to substantiate your allegation of this 3 systematic, wholesale cutting of rebars; do you agree? 4 A. Well, let me reiterate. 5 Q. Do you agree? 6 A. I disagree. I didn't use the word "wholesale". 7 "Systematic", I said. 8 Q. So now you are saying that from this observation, you 9 cannot come to the view that they were actually cutting 10 at a wholesale scale and systematically? 11 CHAIRMAN: Well, no. I think what he's saying is, rightly 12 or wrongly, and that's a matter for the record, he has 13 never used the word "wholesale", which would suggest 14 a very large number, he has used the word "systematic", 15 which would have a different meaning. 16 MS CHONG: Perhaps I can try to rephrase myself. 17 So are you saying that this cutting, because you did 18 not do any verification, you did not check their 19 identity, so it could well be one of the very isolated, 20 few incidents of cutting that they cut for some other 21 purpose which you did not even verify eventually? Could 22 that be the case? 23 A. What I witnessed was that there were workers cutting the 24 threads of the rebars, and some of the workers were 25 screwing in the threaded steel bars into the couplers.</p>	<p>1 A. (In English) Maybe too dark. 2 COMMISSIONER HANSFORD: Sorry, that's yellow, isn't it? 3 A. (In English) Upper is yellow. Lower is blue. 4 MR PENNICOTT: Beneath the vest. 5 COMMISSIONER HANSFORD: Ah, thank you. 6 MS CHONG: So where is the Leighton logo? 7 A. (In English) Okay, this photo didn't show it. 8 Q. Is it at the back or the front? 9 A. (In English) At the front, at the hat. At the helmet 10 and in the front. 11 Q. I see. 12 CHAIRMAN: The helmets that are shown in the photograph, to 13 my memory, and I will be corrected, they have almost 14 like a label stuck to the side of the helmet and those 15 labels contain Leighton language. 16 A. (In English) "Strive for life". 17 CHAIRMAN: That's it. 18 MS CHONG: So these two workers, you said they were Leighton 19 workers; right? 20 A. According to the uniform, I took them to be Leighton 21 staff. 22 Q. Did you think about how come this kind of rebar fixing 23 work should be the work of Fang Sheung? How come 24 Leighton workers were doing the work of Fang Sheung? 25 Did you make enquiries with them at that time?</p>
Page 22	Page 24
<p>1 Q. Yes. 2 A. Well, let's take a look at D232. 3 Q. Good. 4 A. This was what I witnessed. 5 Q. I will come to that in a minute. Okay, we can go to see 6 the photos. We can go to see the photos that you took 7 on this incident. 8 You took seven photos. 9 A. Correct. 10 Q. Starting from D226 to D232. 11 Now, you told us that you can recognise them by 12 their uniform. 13 A. Mmm. 14 Q. And you took photos. First one, D232. The description 15 you gave to the police about the uniform is royal blue, 16 orange, reflective vests, bearing logo of Leighton. 17 Now, 232, we can't see any royal blue there, right, if 18 I'm not colourblind? 19 A. (In English) Really? 20 Q. Any royal blue there? I can't see that. 21 A. (In English) Maybe I am colourblind, or maybe the photo 22 is too dark. (Indicating). 23 (Via interpreter) This is the royal blue, in the 24 lower. 25 Q. 232. Where? I see. Under the reflective vest? I see.</p>	<p>1 A. Well, if they were Chinat staff, I would take them out, 2 but then, if it is Leighton staff or Fang Sheung staff, 3 I would not intervene. 4 Q. But you saw it such a serious threat to public safety, 5 because you saw these workers doing something really 6 illegal, right, to your standard? Is it fair to check 7 up who was doing this illegal act first before you make 8 a complaint? The normal situation would be, "I'm going 9 to make a complaint, I have to check who is the 10 wrongdoer"; right? "I did not even bother to check"; 11 was that your case? 12 A. Yes, I did. In early September, well, before the photo 13 was taken, a couple of days or a week before the photo 14 was taken, I, together -- I lodged a complaint with 15 Gabriel So and Khyle Rodgers. Then I saw this, then 16 I took the photo. 17 Q. So you had no doubt at that time that they were workers 18 of Leighton? 19 A. At that time, I thought so. 20 Q. Did it occur to you that how come Leighton were doing 21 the work of Fang Sheung at that time? Did you enquire, 22 make enquiry? 23 A. On the 7th I answered that question. 24 Q. You didn't. 25 A. I used the word "corruption".</p>

Page 25	1 Q. Corruption, I see -- 2 A. I'm not going to talk about it anymore. 3 Q. We do not understand how corruption can operate this 4 way. 5 A. (In English) No comment. 6 Q. And as a witness of this Commission, you were protected 7 under section 12, if I'm correct, under section 12 of 8 the Commissions of Inquiry Ordinance, from other civil 9 or criminal suits and you are here to tell the truth, 10 right? And you should not be worried about any ICAC 11 Ordinance or anything. You are here to tell the truth 12 and I'm sure your lawyer would have told you that you 13 have the duty to tell everything here, and you should 14 not be worried as to any criminal offence that may be 15 under the ICAC Ordinance. 16 So if you know anything about corruption, you are 17 free to tell us. 18 A. (In English) I am a master of law and I disagree. 19 CHAIRMAN: I think that was a matter for me rather than you, 20 with respect. 21 MS CHONG: But my understanding is that he will be 22 protected. If after we finish this hearing, with one 23 bit of the puzzle not solved, then the truth will not -- 24 we would not -- 25 CHAIRMAN: I appreciate that --	Page 27	1 A. (In English) Yes. 2 Q. -- they are Leighton workers? 3 CHAIRMAN: I think, in fairness, what he's saying is at that 4 time he assumed they were Leighton workers or staff, 5 because, as he saw it, rightly or wrongly, they were 6 wearing Leighton uniforms. 7 MS CHONG: Yes. 8 CHAIRMAN: He then has said but in retrospect he can't be 9 absolutely sure because he has discovered that Leighton 10 sometimes distributed their uniforms to others. 11 MS CHONG: Yes. 12 CHAIRMAN: So he has accepted, I think, that he was working 13 under an assumption, based on clothing, that they were 14 Leighton staff or employees of some sort. 15 MS CHONG: Yes. 16 A. Thank you. 17 Q. Let's turn to the second photo, D233. 226, maybe. So, 18 again, there was royal blue but we can't see here from 19 the photo; right? Is it the case? 20 A. (In English) Maybe I have too much understanding on site 21 and I see royal blue on the lower part of that 22 particular body. 23 Q. The lower part? 24 A. (Indicating). 25 CHAIRMAN: With respect, again -- please forgive me, I don't
Page 26	1 MR WILKEN: With the greatest respect, this is either 2 a question for Mr Pennicott, yourself, or me. 3 CHAIRMAN: Yes. 4 MS CHONG: Right. So my question is all the time you are 5 saying that it was not Fang Sheung's workers who cut 6 these rebars, number one, but at the other times you are 7 saying cut rebars would be saving the labour cost of 8 Fang Sheung. 9 A. (In English) Yes. 10 Q. That really puzzles me because if the rebars were cut by 11 Leighton's workers, under the order of Leighton, it must 12 be to serve the purpose of Leighton; right? It would 13 not be to serve the purpose of Fang Sheung, because they 14 have already entered into contractual arrangement, and 15 it would be the duty of Fang Sheung workers to do their 16 own work at their own cost; right? 17 A. (In English) Yes. 18 Q. So the question is what would be the purpose -- 19 A. (In English) You answer yourself already. 20 Q. So why the rebars was cut that way? 21 A. (In English) Your question is why the rebar is cutting 22 that way? 23 Q. I will come to that topic maybe after we finish the 24 photos. 25 So you are saying that this D232 --	Page 28	1 mean to be interrupting -- but we've all seen what the 2 reflective vests look like and how much of the upper 3 body they cover. 4 MS CHONG: Yes. 5 CHAIRMAN: So somebody who is bending down, you are very 6 unlikely to see what their T-shirt looks like. One 7 really needs a stand-up shot with the vest partially 8 open, I suppose. 9 MS CHONG: Yes. Perhaps we turn to D230. 10 A. (In English) Yes. 11 Q. Yesterday -- on Day 7, you told this Commission that the 12 person on the left side was Joe Cheung from Fang Sheung? 13 A. (In English) I'm saying Joe. I don't know his surname. 14 Q. But you knew that he was -- 15 A. (In English) Fang Sheung. Fang Sheung's supervisor. 16 Q. Fang Sheung's supervisor. And he was the one who 17 stopped you from taking photos; that's what you said? 18 A. (In English) He attempted to stop me. 19 Q. But in your police statement, you also said this. There 20 was a man -- when you took photo of him -- in the middle 21 of paragraph 10, in the English version: 22 "Afterwards that Chinese man expressed his 23 resentment to me taking photo of him" -- this is the 24 English version -- "and hence I ..." 25 Can you see this?

Page 29	1 A. (In English) Yes. 2 Q. Was this Chinese man, the one you mentioned -- 3 A. (In English) Yes, exactly. 4 Q. Joe Cheung? 5 A. (In English) Joe. 6 Q. Yes. But now you know he is surnamed Cheung. I can 7 tell you that -- 8 A. (In English) In some particular evidence I saw the 9 surname of Cheng, C-H-E-N-G. 10 Q. But you can take it from me that he is surnamed Cheung. 11 A. (In English) Okay, okay. 12 Q. You now know that this man is Joe from Fang Sheung? 13 A. (In English) Yes. 14 Q. And this man was the one, according to your police 15 statement, the person who used hydraulic cutter to cut 16 short the threaded end of rebar, according to your 17 police statement now? 18 A. (In English) Yes. 19 So what is your question? 20 Q. The question is all the time you were saying that you 21 could only identify them as workers from Leighton by 22 their uniform. 23 A. (In English) Yes. 24 Q. But this particular person, Joe, you have absolutely no 25 misunderstanding as to him being from Leighton -- being	Page 31	1 MS CHONG: He, in court -- he, here, confirmed that -- he 2 confirmed that the person stopped him from taking 3 photos, as stated here "expressed his resentment" to 4 take photos, is Joe from Fang Sheung. 5 CHAIRMAN: Yes. 6 MS CHONG: And this evidence only comes from this hearing, 7 and just now I confirmed with him that -- was that Joe, 8 the person you stated in your police statement to be the 9 person who expressed resentment of you taking photos, 10 and he said "Yes". 11 CHAIRMAN: Yes. 12 MS CHONG: And this man in this police statement was stated 13 to be the person cutting the threaded rebars and was 14 wearing Leighton uniform. And by reading the whole 15 thing he was telling the police that the person who was 16 cutting the rebar was from Leighton but in fact he knew 17 full well it was Joe, according to his evidence, Joe 18 from Fang Sheung. 19 So my question is all along, if that's your case, 20 was this Joe Cheung, who was cutting the rebar and 21 stopping you from taking photos, why did you still tell 22 the police that he was a worker from Leighton? 23 Do you understand my question? 24 A. (In English) I understand. Okay. 25 Q. Are we mistaken -- am I mistaken of your --
Page 30	1 from Fang Sheung; right? 2 A. (In English) Yes. 3 Q. You knew him -- 4 A. (In English) I knew him because he always on site -- 5 Q. He was on site, and also -- 6 A. (In English) And also we always -- not always -- at 7 least once a week, we would meet together in some 8 certain meetings. 9 Q. Yes, because of -- if you had to attend those progress 10 meetings; right? 11 A. (In English) I sometimes would attend the progress -- 12 Q. And he also attended the progress meetings of Leighton. 13 A. (In English) He attending every day, I think. 14 Q. So, when you were giving this police statement to the 15 police, you had no doubt that the person stopping you 16 from taking photo was not someone from Leighton but from 17 Fang Sheung? 18 A. (Chinese spoken). 19 (In English) Yes. 20 Q. Right? So why did you still tell the police that it was 21 someone from Leighton who stopped you from taking 22 photos? 23 A. (In English) I did? 24 CHAIRMAN: Sorry, let's just deal with the one -- could you 25 show me where that is said?	Page 32	1 A. (In English) You are not. You are not. You are 2 perfectly not. 3 Q. So can you answer my question? 4 A. (In English) Let me explain. The last three words, the 5 second-last words of the 13th row of paragraph 10, the 6 word "that" should be "a Chinese man". It is also wrong 7 in the Chinese version. 8 Q. Yes. 9 A. (In English) My meaning is "a Chinese man", not "that 10 Chinese man". 11 Q. The Chinese version is very clear. That Chinese man 12 follows from the previous sentence. It actually 13 qualified the Chinese man in the previous sentence. You 14 were talking about the same person, the person who was 15 cutting the rebars was actually the person who stopped 16 you from taking photos. If we read the Chinese 17 version -- I can read it to you now. 18 "(Via interpreter) In photos 1-3, a Chinese man 19 wearing royal blue, orange and yellow coloured polo 20 T-shirt as well as reflective vest bearing the logo of 21 Leighton using hydraulic cutter to cut short the 22 threaded end of a rebar. Afterwards that Chinese 23 man ..." 24 Okay? That qualifies that man. 25 A. (In English) That means this should be "one". That

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<p>1 should be (Chinese spoken). 2 Q. "(Via interpreter) Afterwards that Chinese man expressed 3 his resentment to me taking photos of him." 4 So you are talking about the same man? 5 A. Your interpretation of the language is correct. You are 6 correct in the Chinese and English version. You are 7 very correct. But my meaning was no. I made 8 an omission. 9 In line 13, the English word "that" and in the 10 Chinese version, line 9 in the Chinese version, it 11 should be "a Chinese man". I apologise for that. I'll 12 amend that with the police. 13 Q. I see. Now, let me refer you to the last sentence in 14 this police witness statement, D765. You made 15 a declaration that ... 16 CHAIRMAN: I think he's accepted that these are witness 17 statements and that he's put his signature to them with 18 due formality. 19 MS CHONG: Yes. 20 CHAIRMAN: So it seems to me that he's accepting that this 21 is an error. What we make of it, that is Prof Hansford 22 and I, is another matter. He's saying what should have 23 been there is "a Chinese man". 24 MS CHONG: Yes. 25 So you are now saying that the police wrongly stated</p>	<p>1 Fang Sheung. 2 MS CHONG: Yes. 3 CHAIRMAN: So that's not in issue. On that basis then the 4 question would be ...? 5 MS CHONG: Let me have one more follow-up question. 6 CHAIRMAN: Yes. 7 MS CHONG: You knew full well that the person stopped you 8 was Joe from Fang Sheung; right? 9 A. Mmm. 10 Q. And you also submitted the photographs to the police at 11 that time, right, these -- 12 A. (In English) Yes. 13 Q. -- D230? 14 A. (In English) Yes. 15 Q. And before you submitted the photographs to the police, 16 you must have reviewed the photographs first before you 17 submitted to the police; right? 18 A. Mmm. 19 Q. So you, at that time, could be under no misconception as 20 to who that person is; right? You can recognise him 21 from the photographs; right? 22 A. (In English) Yes. Yes. 23 Q. So, when you were able to recognise this Joe Cheung -- 24 this Joe from Fang Sheung, from the photographs, why did 25 you not tell the police that, "Another man, who is not</p>
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<p>1 your meaning there? It should not be "that Chinese 2 man", it should be another -- "one Chinese man" here; 3 the correct wording should be this, right? 4 A. I have a responsibility as well. It's not wholly the 5 police responsibility. I didn't go through it clearly. 6 Q. This is another error in your police statement. Would 7 you accept that you are such a careless person, not to 8 spot this important error there? 9 A. Not spotting an error, there are many reasons. 10 I already gave a full day of evidence and I was 11 exhausted. If you say I am a careless person based on 12 that, then I wouldn't be able to graduate -- I graduated 13 with 1st honours. 14 Q. Let me suggest, put it to you -- you can either agree or 15 disagree -- either you made up your evidence that this 16 person stopped you from taking photos was Joe Cheung in 17 this hearing, or -- this could be the first scenario; do 18 you agree? 19 CHAIRMAN: Sorry, I don't understand that. I do apologise. 20 MS CHONG: Let me put to you this. 21 CHAIRMAN: He said he knew a man called Joe, and there's 22 a photograph which he has recognised as being Joe. 23 MS CHONG: Yes. 24 CHAIRMAN: And he says that he knew Joe was always with 25 Leighton -- sorry, he knew Joe was always with</p>	<p>1 me" -- 2 A. (Chinese spoken). 3 Q. -- was Fang Sheung worker Joe"? Did you tell the police 4 this? 5 A. I did discuss that with police. The police said that 6 they didn't take a full picture of the person's face. 7 We only have 20 per cent of the face. So they felt that 8 if I were to make that identification, I have to provide 9 the person's details and I couldn't do so at the time, 10 so I just said "a Chinese man". 11 Q. I see. So it was -- 12 A. Because first we had a blurry picture and the second 13 picture only had a partial image of the person's face. 14 Q. So are you saying that all your witness statements with 15 the police were actually the discussion result of what 16 you -- actually the result of what you discussed with 17 the police? 18 A. (In English) No, because I cannot give further details 19 of this person, this particular person on that 20 particular moment. 21 Q. Was it the case that the police asked you not to write 22 "Joe" here, write "Joe from Fang Sheung" here? 23 CHAIRMAN: Sorry, again, I do apologise. Is there anything 24 wrong in a police officer taking a statement from 25 a witness, asking the witness certain questions or</p>

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<p>1 discussing certain aspects? Because I think what he 2 seems to be saying is that in making the witness 3 statement, the statement-taker asked a few questions 4 and, although he had a pretty good idea who this was, 5 namely Joe, the policeman said, "With only half the face 6 showing, I don't think you should be identifying 7 somebody and we'll just call him 'a man'." 8 MS CHONG: I see. 9 CHAIRMAN: With the greatest of respect, again it's 10 a matter -- if you've got a situation where he says, 11 "I recognise the man and he's a Fang Sheung worker", 12 that tends to support the fact that he meant to say 13 "a man" as opposed to "the men", because he had already 14 recognised "the men" as being Leighton workers. 15 MS CHONG: My question would be even though he did not have 16 the full name or full details of this worker, but there 17 are other details such as his name is Joe, he's from 18 Fang Sheung, he's a supervisor. All these details, if 19 that indeed, that man was Joe, that ought to be put in 20 this police statement. 21 CHAIRMAN: But no. I accept fully the force of your 22 question. All I'm saying is what Mr Poon has said is, 23 "I knew he was Joe, but there's only half his face 24 showing in the one photograph, the other photograph is 25 not fully in focus, and the police statement-taker said,</p>	<p>1 giving this police statement. Do you agree? 2 A. (In English) You mean the cutting exercise? 3 Q. Yes. 4 A. (In English) Yes. 5 Q. And also the stopping you from taking photos -- 6 A. (In English) No. 7 Q. -- this Joe did not -- it's my case that Joe Cheung from 8 Fang Sheung did not stop you on that night from taking 9 photographs. 10 A. (In English) No. 11 Q. And he had no participation in this scenario; do you 12 agree? 13 A. (In English) Okay. This set of seven photos. 14 Q. He did not participate in any of those? 15 A. (In English) Are you specific, just asking if Joe 16 stopped me from taking the photos? 17 Q. He did not stop you from taking photos? 18 A. (In English) No. 19 Q. You disagree? 20 A. (In English) Disagree. 21 Q. You said you were stopped from taking photos but you 22 were still able to take one photo, that is photo 7. 23 Photo 7, that is D232. 24 A. (In English) Yes. Yes. 25 Q. Do you agree that it seems that the photo was taken at</p>
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<p>1 "Well, I don't think we should be identifying a person 2 when we can only say half of his face', so that's why 3 I didn't say anything about him." 4 MS CHONG: That's his answer. 5 But still, my question is you can, because you can 6 clearly identify this person by your knowledge of him, 7 you can still put all this information there in the 8 police statement. Why didn't you say so? And it was 9 the first time you said this in court, in the hearing. 10 So -- 11 CHAIRMAN: All right. I don't think we can take it any 12 further. What we make of it is another matter. But if 13 a police officer taking a statement says to you, "Look, 14 we can only see half his face, and the other photograph 15 is blurred, I don't think we should put his name in 16 because we may be wrong" -- now, whether we accept that 17 or not is another matter, it's a matter for us. But he 18 is saying he didn't then put in a lot of details about 19 him because the police officer had said, "Don't do so." 20 MS CHONG: Yes. 21 Let me put it to you that all the time, you only -- 22 you mentioned that it was from Leighton because there 23 was no participation of Joe at that time. Do you agree? 24 And that's why you did not put anything about Joe of 25 Fang Sheung in your witness statement, when you were</p>	<p>1 close proximity to the two workers, and it was at 2 a quite good angle? 3 A. (In English) Yes. 4 Q. Despite stopped by Joe Cheung, is it your evidence that 5 you were still able to take such close-up photos of the 6 workers? 7 A. (In English) Yes. 8 Q. You also mentioned that there were 20 to 30 cut threaded 9 heads at the scene. 10 A. Yes. 11 Q. But you did not take any photos of that; right? 12 A. (In English) Yes. 13 Q. Why did you not take any photos? 14 A. (In English) They are dropping on the bottom of multi 15 layers of the rebar. 16 Q. Yes. 17 Let's return to the saving of labour cost topic 18 because I haven't finished just now. Let's go back to 19 that topic. 20 Now, at one point you said that the cutting -- now 21 you admit it was not Fang Sheung's worker who was 22 cutting, right, cutting the rebars on the 22nd -- 23 A. (In English) On that moment (Nodded head). 24 Q. At that moment, 22 September. 25 CHAIRMAN: Again, I don't wish to sound pernicky, but his</p>

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<p>1 evidence, as I understand it, is quite clear. He 2 presumed, because of the uniforms that were being worn, 3 that they were Leighton employees or staff of some kind. 4 MS CHONG: Yes. 5 CHAIRMAN: So he was at all times working on a presumption. 6 MS CHONG: Yes. 7 CHAIRMAN: He did not enquire, in order to receive 8 confirmation that his presumption was a fact. 9 MS CHONG: Yes. 10 A. (In English) Yes. 11 Q. So, perhaps on this uniform point, may I refer you to 12 your witness statement. 13 A. (In English) Yes. 14 Q. You made a summary in paragraphs 73 and 74 -- 15 A. (In English) Yes. 16 Q. -- of your witness statement, stating that you have 17 never seen any staff members of Fang Sheung cutting the 18 threaded rebars, right, and you did not hear any report 19 from your staff members of Fang Sheung cutting the 20 threaded rebars; right? 21 A. (In English) Yes. 22 Q. And how you came to this conclusion -- 23 A. (In English) Sorry, your question? 24 Q. You stated in paragraph 86 that you were able to tell 25 different workers from different companies, because you</p>	<p>1 rebar fixers, their clothing is normally contaminated by 2 rust and sweat. Therefore, their clothing is always in 3 contaminated dark brown colour. 4 Q. Yes. 5 A. (In English) It doesn't mean they have a uniform in dark 6 brown colour. 7 Q. I see. 8 A. (In English) If my English standard is too low, 9 I apologise on it. 10 And in my fifth witness statement, I am trying to 11 clarify the appearance of Fang Sheung rebar fixers, and 12 it did shown on MTRC daily reports, when they are 13 attaching the photos on the daily reports, plenty of 14 photos showing the situations, that Fang Sheung wearing 15 their own style of uniforms. They normally wear their 16 own shirt, in different style, even casual shirts, and 17 then cover with a safety vest. 18 Q. Yes. 19 A. (In English) So in summary or in general, Fang Sheung 20 staff, in my vision and in my memory, they don't have 21 a "uniform". But this contradicts your previous message 22 that you're saying that Fang Sheung is getting 23 Leighton's clothes, uniforms, and wearing them. 24 Q. We may have witnesses to give evidence on that part. 25 So are you saying that when you gave your summary on</p>
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<p>1 said that Leighton's staff members could "easily be 2 identified" by their uniforms. 3 A. Yes. 4 Q. And you also said that "staff of Fang Sheung were all 5 rebar fixers and their uniforms were heavily 6 contaminated by sweat and rust in dark brown colour"; 7 right? 8 A. Mmm. 9 Q. That was the reason that you were able to tell among 10 different workers from different companies? 11 A. (In English) So I'm telling -- I'm identifying them by 12 means of their appearance, especially the uniform. 13 Q. Was it the case that, from your experience of site 14 patrol, the workers from Fang Sheung you normally came 15 across were those -- were in their own uniform, like 16 what you described, "heavily contaminated by sweat and 17 rust in dark brown colour", this is the first version 18 you gave; and then another description you gave in the 19 fifth witness statement, you said that they did not wear 20 specific uniforms? 21 A. Mmm, mmm, mmm. 22 Q. Was that the case, that workers of Fang Sheung you came 23 across, normally in those clothing? 24 A. (In English) I clarify. My message or my meanings in 25 paragraph 86 of D37, I am attempting to describe the</p>	<p>1 this -- let me rephrase my question. 2 In your paragraph 40, D21 -- by reading your witness 3 statement, it seems that you paint a picture that it was 4 Leighton cutting the rebars, and at no point in your 5 witness statement you pointed out that it was 6 Fang Sheung workers who were cutting the rebars. Do you 7 agree? Especially paragraph 40. 8 A. (In English) Agree. Agree. Agree, when I witnessed 9 this statement. 10 Q. Yes. It seems from your -- from what you depose here, 11 it seems that there is no evidence from your side, from 12 your own witness, from your own information, that it 13 were the workers of Fang Sheung who were cutting the 14 rebars, subject to the uniform? 15 CHAIRMAN: Again, sorry, "from your own witness" -- 16 MS CHONG: Statement. 17 CHAIRMAN: All right. 18 In other words, would you accept that in your 19 statements and in your evidence today, you have said 20 nothing to implicate staff of Fang Sheung as being 21 culpable of cutting threaded reinforcement bars? 22 A. (In English) Yes. 23 MS CHONG: Yes. And in your paragraph 40, you actually 24 pointed out your discussion with Leighton people on this 25 subject?</p>

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<p>1 A. (In English) It is talking about another incident on mid 2 of September; okay? 3 Q. Okay. Now, let's go back to the "save labour cost" 4 issue. You accept that from your information, it was 5 not Fang Sheung workers cutting these rebars? 6 A. Mmm. 7 Q. At one point, you also say that cutting rebars could 8 save labour costs? 9 A. Mmm. 10 Q. But just now we worked out the time for cutting rebars 11 and also putting them together into the coupler. We can 12 work out that if rebars are cut and then to put into the 13 couplers, it actually takes more time, labour time, to 14 do so; right? 15 A. Mmm. Mmm. Mmm. 16 Q. Do you agree that there is no benefit, if so, for Fang 17 Sheung to do such thing, cutting rebar and then put them 18 into the couplers; do you agree? 19 A. (In English) If the whole cost of exercise, if you 20 isolate only on the vision of Fang Sheung, yes. 21 However, trying to further explain my answers in 22 previous occasions, concerning my subject of 23 cost-saving, very easy. 24 Q. Yes. 25 A. (In English) Fang Sheung is a sub-contractor,</p>	<p>1 understand that matter. 2 So could we perhaps take it in easy steps, so we can 3 understand the logic of what you're saying, in economic 4 terms? 5 A. (In English) Okay. Easy. Fang Sheung is getting paid 6 according to the work done, and his cost is providing 7 labour, committing labour, to do that kind of works. If 8 there is some other entity provide free labour to 9 complete that works for Fang Sheung and Fang Sheung is 10 still getting paid, then, in the vision of Fang Sheung, 11 Fang Sheung is getting benefit and save the labour cost. 12 And purely in a businessman system of thinking, 13 I didn't touch subjects of how much time we have to use 14 to screw the couplers into -- to screw the threaded bar 15 into coupler, et cetera. 16 CHAIRMAN: Sorry, you have lost me, and I appreciate that 17 there is often economic subtleties which are known to 18 those in the trade or in the business which may be lost 19 upon initial examination. 20 COMMISSIONER HANSFORD: I think I understood Mr Poon's 21 logic. Can I put it that what you're saying, Mr Poon, 22 is Fang Sheung has a certain amount of work to do. If 23 a part of that work is being done by another party, and 24 Fang Sheung is still being paid for the same amount of 25 work to do, then Fang Sheung is saving costs; is that</p>
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<p>1 undertaking the works according to the sub-contract 2 agreement, and being paid according to the work done 3 quantity. 4 Q. Yes. 5 A. (In English) And the scope of coupler installations 6 falls into the scope of Fang Sheung. 7 Q. Yes. 8 A. (In English) Therefore, the completion of the 9 installation of the threaded bars is benefitting 10 Fang Sheung on reimbursement of payment. If the labour 11 doing that works was not Fang Sheung staff, then 12 Fang Sheung is saving cost. 13 Q. I'm afraid I do not understand. Perhaps -- 14 A. (In English) Sorry. 15 (Via interpreter) If you don't understand, let me 16 say it again in Chinese. 17 (In English) So nobody get my point. Okay. 18 Q. My question is, according to what you said, to cut 19 a rebar and then to put into a coupler, it actually 20 takes more time -- 21 CHAIRMAN: We have that. That's accepted. What I think 22 Mr Poon is saying, and I don't really understand the 23 thrust of it, is something to the effect of more general 24 labour costs, and if somebody else comes in then 25 Fang Sheung is saving costs. But I don't really</p>	<p>1 your point? 2 A. (In English) Exactly. 3 CHAIRMAN: All right. That I understand. 4 MR PENNICOTT: Sir, I think that is the point, and of course 5 it does require, to make it make sense, if it does make 6 sense, to look at the Fang Sheung sub-contract, to see 7 the nature of that sub-contract and the basis upon which 8 they were getting paid. 9 CHAIRMAN: Yes. 10 MS CHONG: Are you saying that the cutting of the threaded 11 rebars would serve any economic purpose? 12 CHAIRMAN: Yes. I think, if you look to Prof Hansford's 13 clarification -- you can study that on the transcript -- 14 I think you'll find that it actually does clearly 15 illustrate the logic. The truth is something else, and 16 I'm not suggesting it's untruthful. I'm saying just 17 because the logic is understood, it doesn't mean we 18 accept the premise of what's happened. 19 MS CHONG: Yes. 20 CHAIRMAN: Perhaps you might want to look at that. We will 21 have the tea adjournment now -- would that be -- 22 MR PENNICOTT: Yes. 15 minutes? 23 CHAIRMAN: 15 minutes. Thank you. 24 (11.20 am) 25 (A short adjournment)</p>

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<p>1 (11.41 am)</p> <p>2 MS CHONG: Let me put it to you that what you said just</p> <p>3 before the break, it doesn't make any sense, because,</p> <p>4 number one, you did not know any of the contractual</p> <p>5 arrangement between Fang Sheung and Leighton. Do you</p> <p>6 agree?</p> <p>7 A. (In English) Don't agree. Don't agree.</p> <p>8 Q. You were not a party to their contractual arrangement?</p> <p>9 A. (In English) I am not, yes.</p> <p>10 Q. And if what you said were true, according to what you</p> <p>11 said, there were hydraulic cutters on the scene; right?</p> <p>12 Can you take a look at this exhibit? (Physical</p> <p>13 exhibit handed).</p> <p>14 A. (In English) Yes.</p> <p>15 Q. Was this the cutter that you saw in D228 and also D227?</p> <p>16 A. (In English) Same type, yes.</p> <p>17 Q. The same? Same type?</p> <p>18 A. (In English) Same type.</p> <p>19 Q. May I tell you that this is not hydraulic cutter, this</p> <p>20 is what we call battery cutter, hand-held cutter.</p> <p>21 A. (In English) Can you show the box, the name of the</p> <p>22 product, et cetera, so that you substantiate your words?</p> <p>23 Okay, different box. Sorry. I want to prove with</p> <p>24 the box, but the package is not --</p> <p>25 CHAIRMAN: Would there not be, unless it's worn away, some</p>	<p>1 A. (In English) Okay. I accept.</p> <p>2 COMMISSIONER HANSFORD: And this is the battery.</p> <p>3 A. (In English) Yes.</p> <p>4 COMMISSIONER HANSFORD: So it's a battery cutter with a band</p> <p>5 saw that presumably will cut steel.</p> <p>6 A. Mmm.</p> <p>7 COMMISSIONER HANSFORD: Thank you. Did you want to see?</p> <p>8 CHAIRMAN: No, I can see from here.</p> <p>9 MR PENNICOTT: Sir, I'm not sure whether it's relevant or</p> <p>10 not, but certainly one can read, on this part of the</p> <p>11 cutter (indicating), there's a little -- you can see it,</p> <p>12 Mr Poon, just here?</p> <p>13 A. (In English) Yes.</p> <p>14 MR PENNICOTT: There's a reference which appears to be</p> <p>15 "HD18BS".</p> <p>16 A. (In English) Yes, model number.</p> <p>17 MR PENNICOTT: Whether that means anything to anybody or</p> <p>18 not, I don't know, but I'm just pointing it out --</p> <p>19 A. (In English) Not necessarily model number.</p> <p>20 MR PENNICOTT: -- because that's what it says.</p> <p>21 CHAIRMAN: Mr Poon, would you agree that what you are</p> <p>22 looking first appears to be a machine of the same type</p> <p>23 as the one in the photograph D228?</p> <p>24 A. (In English) Yes.</p> <p>25 CHAIRMAN: And would you agree that the machine is not, in</p>
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<p>1 form of writing or identification on that machine?</p> <p>2 A. (In English) There is identification of the brand name,</p> <p>3 then a sticker with the phone numbers, and there is some</p> <p>4 safety code, and the manufacturer, a German company.</p> <p>5 That's all.</p> <p>6 MS CHONG: It looks like the one in D -- it's the one you</p> <p>7 saw, right, in D228?</p> <p>8 A. (In English) Yes, exactly.</p> <p>9 CHAIRMAN: Does it describe on the machine itself what it</p> <p>10 is?</p> <p>11 A. (In English) No.</p> <p>12 MR PENNICOTT: It's got a reference number.</p> <p>13 CHAIRMAN: Perhaps we can have a look. Certainly</p> <p>14 Prof Hansford will be able to do so in an educated way.</p> <p>15 COMMISSIONER HANSFORD: I don't think that's on my CV,</p> <p>16 Chairman.</p> <p>17 MR PENNICOTT: It is now.</p> <p>18 COMMISSIONER HANSFORD: It is now.</p> <p>19 (Exhibit handed). Okay, I see a cutter with a band</p> <p>20 saw that has two circular discs that operate the band</p> <p>21 saw. It doesn't look to me as though it's operated</p> <p>22 hydraulically. It looks as though it's operated</p> <p>23 electrically.</p> <p>24 A. (In English) Okay.</p> <p>25 COMMISSIONER HANSFORD: Is that correct?</p>	<p>1 its proper description, a hydraulic cutter?</p> <p>2 A. (In English) Disc cutter. Hydraulic disc cutter? Okay,</p> <p>3 I abide by Mr Hansford's description.</p> <p>4 CHAIRMAN: All right. Well, the way you approach it tends</p> <p>5 to suggest that maybe, in more common parlance perhaps</p> <p>6 in the trade or industry, these are seen as hydraulic</p> <p>7 disc cutters by way of some generative description?</p> <p>8 A. (In English) Yes, because in Chinese we call it</p> <p>9 "(Chinese spoken)".</p> <p>10 MS CHONG: Let me tell you this is something called</p> <p>11 hand-held battery cutter and it took 1.5 to 2 minutes to</p> <p>12 cut a bar.</p> <p>13 A. (In English) I don't think 1.5 to 2 minutes to cut</p> <p>14 a bar.</p> <p>15 Q. It won't take 20 to 30 seconds to cut a bar, as you</p> <p>16 suggest; do you agree?</p> <p>17 A. (In English) Disagree.</p> <p>18 Q. And if what was -- and what you said would not have --</p> <p>19 could not have happened on the site because if bars were</p> <p>20 cut, that means it took some time to cut the bars, and</p> <p>21 then other workers would have no bars to screw because</p> <p>22 they had to wait for all these bars to be cut and it</p> <p>23 would take even more time and it would simply be</p> <p>24 unthinkable that people would be standing, waiting for</p> <p>25 these bars to be cut to be screwed into the couplers.</p>

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<p>1 It couldn't happen that way on the site; do you agree?</p> <p>2 A. (In English) This did happen.</p> <p>3 Q. Sorry?</p> <p>4 A. It did happen.</p> <p>5 Q. I also put it to you that it's not -- do you agree that</p> <p>6 in all your police statements and in all your witness</p> <p>7 statements, you made no complaints against Fang Sheung</p> <p>8 cutting the rebars; do you agree?</p> <p>9 A. (In English) Yes.</p> <p>10 Q. I also put it to you that it was not Fang Sheung who was</p> <p>11 cutting all these rebars.</p> <p>12 A. (In English) When I writing, submitting the witness</p> <p>13 statement, yes, I am, at that particular moment of my</p> <p>14 good knowledge.</p> <p>15 Q. Yes.</p> <p>16 A. (In English) And subsequently, when I hearing the</p> <p>17 cross-examination on previous occasions, there is</p> <p>18 a doubt appear on the uniform.</p> <p>19 Q. So are you saying that now, when you made the complaints</p> <p>20 to all the police -- to all the -- in your witness</p> <p>21 statements, you did not properly check and did not do</p> <p>22 your investigation before you launched such a massive</p> <p>23 scale of complaint?</p> <p>24 CHAIRMAN: Sorry, you have to forgive me here, but are you</p> <p>25 trying to get the witness to say that Fang Sheung was</p>	<p>1 taking photos, he should have relayed this piece of</p> <p>2 evidence in his police statement.</p> <p>3 MR PENNICOTT: Sir, I am bound to say I had the same</p> <p>4 impression as you did. I thought that Fang Sheung were</p> <p>5 accepting that the gentleman in the photograph, who we</p> <p>6 can see about 25 or 30 per cent of his face, was indeed</p> <p>7 Joe. Frankly, one would have thought, given the</p> <p>8 evidence Mr Poon gave the other day, instructions would</p> <p>9 have been taken immediately to find out from Joe whether</p> <p>10 he accepted it was him or not, or it's simply not known,</p> <p>11 or he's unsure or something. But I would have thought</p> <p>12 Fang Sheung really need to take a clear position on</p> <p>13 this. Either it is Joe, it isn't Joe, or they are not</p> <p>14 sure, one or the other, but it does need to be made</p> <p>15 clear, with respect, if the questions are going to</p> <p>16 continue to be asked of Mr Poon in this way.</p> <p>17 CHAIRMAN: Yes, because the impression we've got is that</p> <p>18 you're trying to bring Fang Sheung into the picture as</p> <p>19 opposed to step them away from the picture.</p> <p>20 MS CHONG: Perhaps I will just wrap up my cross-examination</p> <p>21 that -- now, at all points you did not witness any</p> <p>22 Fang Sheung workers cutting the rebars; do you agree?</p> <p>23 CHAIRMAN: I think we've covered that. What we've covered</p> <p>24 is that he has said that at the time, he had no reason</p> <p>25 to think that these were Fang Sheung workers, because he</p>
<p>Page 54</p> <p>1 intimately involved in this?</p> <p>2 MS CHONG: No, no, no.</p> <p>3 CHAIRMAN: Because what you are saying on the one side is</p> <p>4 it's a wrongful identification of this man called Joe,</p> <p>5 which means that Joe is Fang Sheung and he's there</p> <p>6 saying, "Don't take photographs", and you are saying</p> <p>7 that there's a wrongful identification of the people</p> <p>8 wearing Leighton uniforms, and that they really could be</p> <p>9 Fang Sheung?</p> <p>10 MS CHONG: No. I'm saying that this witness has a tendency</p> <p>11 to make up things when he is in the witness box. If</p> <p>12 that person was Joe, indeed he knew him, he could have</p> <p>13 told the police in his witness statement.</p> <p>14 CHAIRMAN: But you've said he's Joe.</p> <p>15 MS CHONG: No, I just put to him that he was not Joe and Joe</p> <p>16 did not put up the resistance -- did not --</p> <p>17 CHAIRMAN: I thought you said the photograph is of a man</p> <p>18 called Joe and you gave his surname and you gave certain</p> <p>19 other details.</p> <p>20 MS CHONG: Yes. That was his -- I just referred to his</p> <p>21 evidence. He referred that person to be Joe and in fact</p> <p>22 we cannot identify the person from the photographs.</p> <p>23 So the line of cross-examination was that he tends</p> <p>24 to make up things in the witness box. If that person</p> <p>25 was indeed Joe and that Joe indeed stopped him from</p>	<p>Page 56</p> <p>1 identified the people by uniform, and on that assumption</p> <p>2 that those uniforms were Leighton, assumed also that</p> <p>3 they had to be Leighton staff and not Fang Sheung.</p> <p>4 MS CHONG: Yes.</p> <p>5 CHAIRMAN: And I think it's your case, if I'm right, going</p> <p>6 back -- and please forgive me if I'm not -- that this</p> <p>7 man, Joe Cheung or Cheng, was Fang Sheung, but it's</p> <p>8 denied that he prevented Mr Poon from taking</p> <p>9 photographs.</p> <p>10 MS CHONG: Yes, he denied, and that if the workers were</p> <p>11 doing normal work procedures on that day, it was nothing</p> <p>12 about this bar cutting to cheat coupler installation.</p> <p>13 That's the case.</p> <p>14 CHAIRMAN: All right. That's good. Thank you very much.</p> <p>15 MS CHONG: So I put to you that if you were indeed on the</p> <p>16 site on 22 September 2015, the workers there were doing</p> <p>17 some normal work procedures; do you agree?</p> <p>18 A. I disagree.</p> <p>19 Q. And as a result, because they were doing something</p> <p>20 totally normal in their work procedures, you were able</p> <p>21 to take so many photos on the site and no one stopped</p> <p>22 you from taking photos?</p> <p>23 A. I disagree.</p> <p>24 Q. And Fang Sheung workers had never engaged in bar cutting</p> <p>25 to cheat on coupler installation, as you suggest.</p>

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<p>1 CHAIRMAN: No, he hasn't suggested that. That's the point, 2 you see. 3 The point is -- with the greatest of respect, 4 I think we understand the position, so perhaps sometimes 5 the less said the better, if I can put it that way. 6 MS CHONG: In that case, that's my last question. I have no 7 further questions. 8 CHAIRMAN: Thank you very much. 9 Cross-examination by MR BOULDING 10 MR BOULDING: Good morning, Mr Poon. 11 A. (In English) Good morning. 12 Q. Now, you have already been questioned for some time, as 13 a result of which many of the matters I wanted to 14 discuss with you have already been dealt with. Do you 15 understand that? 16 A. (In English) Understand. 17 Q. But, notwithstanding, there are one or two important 18 matters that I fear we need to discuss. 19 A. (In English) Understand. 20 Q. Thank you. 21 Now, if you could take out your first witness 22 statement and go to page D19. 23 A. (In English) Yes. 24 Q. We see there, do we not, that you deal with the alleged 25 incidents in August 2015; correct?</p>	<p>1 right? 2 A. (In English) No. No. Sometime in May or June we are 3 doing some retaining -- vertical bindings already. 4 Q. Can we have a look at page D18 in your witness 5 statement, paragraph 26: 6 "Due to unforeseeable circumstances, Chinat only 7 commenced works in or about late July 2015. Leighton 8 also did not require Chinat to participate in the works 9 of EWL slab construction of area A and bay 1875 of 10 area C1. Unfortunately, there were no written records 11 for such arrangements." 12 Is that correct or incorrect? 13 A. (In English) EWL slab. EWL slab. 14 Q. I'm just reading what you say: "Chinat only commenced 15 works in or about late July 2015". 16 A. We only commenced EWL slab works in late July 2015. 17 Before that, we went on site to do vertical binding. 18 Q. Okay. So it's right, is it not, that these cutting 19 incidents that you refer to took place pretty early on, 20 when you were working on the EWL slab? 21 A. Yes, from the beginning, yes. 22 Q. And, so far as you are concerned, it's right, is it not, 23 that this was malpractice, something that shouldn't have 24 occurred? 25 A. (In English) Yes.</p>
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<p>1 A. (In English) Yes. 2 Q. And in paragraphs 30 to 32 of your statement, if I may 3 be permitted to paraphrase, you mention, do you not, 4 that in mid-August 2015, firstly, Mr Leung, your 5 foreman, and Mr Chu Ka Kam, had already told you about 6 Leighton workers cutting rebars sometime in late July in 7 bays 2 and 4 of area C1. That is correct, is it not? 8 That's what you tell the learned Chairman? 9 A. Yes. There's another point about using grinding 10 machines. 11 Q. If you stick to my question, Mr Poon, I think we'll get 12 on rather quickly, as opposed to you offering to make 13 little speeches. Okay? 14 A. (In English) Thank you. 15 Q. Thank you. 16 And you tell us, do you not, that you personally 17 witnessed four occasions, between about August 2015 and 18 22 September 2015, when you say you witnessed rebar 19 cutting; correct? 20 A. Four occasions? 21 Q. Yes, in paragraph 33, paragraph 38, paragraph 39 and 22 paragraph 41, four occasions; correct? 23 A. (In English) Okay. Yes. 24 Q. It's correct, is it not, that China Technology, your 25 company, had only started work in July, July 2015;</p>	<p>1 Q. And you were concerned, as I understand your evidence, 2 because it had safety concerns associated with it; 3 right? 4 A. (In English) Yes. 5 Q. And indeed you tell us that you tried to stop it? 6 A. (In English) When I saw it, yes. 7 Q. So for you to be doing something like that, I suggest to 8 you that you would regard it as a very serious matter; 9 is that a fair summary? A very serious matter. 10 A. It's a serious matter, yes. 11 Q. Staying with the incidents, the alleged incidents, in 12 August, we've seen, in paragraphs 30 to 32 of your 13 witness statement, that you deal with your discussions 14 with a Mr Chu and a Mr Leung; correct? 15 A. (In English) Yes. 16 Q. And that took place at an internal meeting, I think 17 attended by you and 12 other China Technology staff, in 18 about mid-August 2015; correct? 19 A. Correct. 20 Q. Then, if we look at what you say in paragraphs 31 21 and 32 -- firstly, 31: 22 "I asked Mr Leung and Mr Chu as to who was/were the 23 person(s) cutting the threads. Both Mr Leung and Mr Chu 24 told me that they were staff member(s) of Leighton." 25 Then you go on to say:</p>

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<p>1 "I suggested to Mr Leung that he should report the 2 matter to MTRC for record purposes. Sometime later, 3 Mr Leung and Mr Chu told me that they had reported the 4 matter to MTRC." 5 Now, it's absolutely right, is it not, that there's 6 no suggestion in your witness statement that you asked 7 either Mr Leung or Mr Chu how many rebars had been cut? 8 No suggestion there at all that you asked them that 9 question, is there, Mr Poon? 10 A. (In English) Yes. 11 Q. You're agreeing with me? 12 A. (In English) Agree. 13 Q. And, similarly, there's absolutely no suggestion there, 14 is there, that you asked them how serious the situation 15 was? 16 A. Yes. 17 Q. You're agreeing with me? 18 A. (In English) Yes. 19 Q. Nor is there any suggestion there, Mr Poon, is there, 20 that you said, "Look, Mr Leung. Look, Mr Chu. You tell 21 me that this occurred in July, two or three weeks ago. 22 Why didn't you tell me before"? No suggestion that you 23 said that, is there? 24 A. No. 25 Q. It's also the case, is it not, that you made absolutely</p>	<p>1 A. (In English) Yes. 2 Q. -- is that it's a pretty odd thing for you to tell 3 Leung, "Come on, Leung, report it to MTRC", because 4 normally a sub-contractor like you would liaise, report 5 to your employer, Leighton. That's the norm, isn't it, 6 Mr Poon? 7 A. Because they told me it was Leighton cutting the bars. 8 That's why I told them to go tell MTRC, so MTRC could 9 watch them closely. 10 Q. But why didn't you report it to the Leighton 11 supervisors, the Leighton superintendents: "Come on, 12 Leighton, what are you doing this for?" That's the 13 obvious thing to do, is it not, Mr Poon? 14 A. Because there was no supervision by Leighton on site at 15 all. Now, after the completion of works, it's MTRCL who 16 accepted the works. There's nothing in between. 17 There's not a middle layer, in other words. 18 Q. Whether or not you are right on that is a matter for 19 debate, but it would not have prevented you, would it, 20 Mr Poon, from picking up a telephone, getting on the 21 email, which you are so good at, and saying to Leighton, 22 "Look, Leighton, we've only been here three or four 23 weeks and already I've witnessed your workers carrying 24 out this serious malpractice. It's got serious safety 25 problems associated with it. What are you doing this</p>
<p>Page 62</p> <p>1 no contemporaneous record of this serious malpractice, 2 did you? 3 A. No. 4 Q. 32 -- I've read it to you once already but we're going 5 back there: 6 "I suggested to Mr Leung that he should report the 7 matter to MTRC for record purposes. Sometime later, 8 Mr Leung and Mr Chu told me that they had reported the 9 matter to MTRC." 10 Now, whilst you don't refer to it in your witness 11 statement, I take it that they would have told you what 12 you allege they say they told you, what, in mid-August 13 2015? Does that sound about right? 14 A. (In English) I think sometime later than mid-August, 15 between mid-August and end August. 16 Q. Okay. That will do for my purpose. 17 Can I suggest, Mr Poon, that it's a pretty odd thing 18 for you to be doing, isn't it, telling Mr Leung that he 19 should report the matter to MTRC? The reason I say it's 20 pretty odd is that you would normally expect 21 a sub-contractor, like China Technology, to liaise with 22 its employer directly, wouldn't you? That's what you 23 would expect? 24 A. So you're saying that I liaise personally with them? 25 Q. No. What I'm suggesting to you, Mr Poon --</p>	<p>Page 64</p> <p>1 for?" That would have been the appropriate thing to do, 2 wouldn't it, Mr Poon, in the circumstances? 3 A. Well, it's natural. You know, the inspection and 4 acceptance is done by MTRC, so we tell MTRCL and ask 5 them to stop it, it's only a natural course of events. 6 Q. Well, you haven't answered my question, Mr Poon, but 7 that won't be the first time over the course of the last 8 four days, will it? So I'll move on. 9 Tell me this: why did you tell your staff to report 10 it to MTRC? Why didn't you do it yourself? 11 A. Because I didn't see it myself. I said that already. 12 Q. You might not have seen it yourself at this time, 13 assuming it occurred, as to which there's an issue, but 14 the fact that you hadn't seen it would not have 15 prevented you, the boss of China Technology, reporting 16 it to MTRC, would it? You're the boss. You would have 17 been the appropriate person to report it, I suggest. 18 Fair comment? 19 A. At that moment, during that period, first of all 20 I didn't witness it myself. Secondly, I was not aware 21 of the number of -- the quantity and the gravity. 22 Thirdly, I was still relying very much or I still 23 respected the inspection and acceptance system of the 24 MTRCL. 25 At that time, in fact I saw only the MTRCL doing</p>

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<p>1 inspection and acceptance, so if I told MTR -- if we 2 asked MTR to watch closely, it's only natural. There's 3 no one, no supervisor from Leighton on site watching the 4 works, actually. 5 Q. Well, I've got to suggest, Mr Poon, that's the first 6 time you've ever suggested that there was no Leighton 7 supervisor on site. That's simply not correct, is it, 8 Mr Poon? That's not correct? 9 A. (In English) No. 10 (Via interpreter) If you review the site diary of 11 the MTRCL, for every site diary there are photos 12 attached, and you can check on the photos whether you 13 see any Leighton staff there. 14 Q. So is your evidence, on oath, to the learned 15 Commissioners, that there were no Leighton supervisors 16 on site in August 2015? Is that your evidence? 17 A. What I mean is, for couplers, at the main contractor 18 level, there should be 100 per cent supervision of the 19 installation, 100 per cent. 20 Q. Mr Poon, please answer my questions and we'll get along 21 a little bit quicker. I asked you whether your evidence 22 on oath to the learned Commissioners was that there were 23 no Leighton supervisors on site in August 2015. Is that 24 your evidence? 25 A. They did not supervise the carrying out of the works.</p>	<p>1 got to suggest -- I'll put it one last time -- that 2 there were Leighton supervisors on site, and the proper 3 thing for you to do, Mr Poon, was to have contacted them 4 and said, "Look, this malpractice, this dangerous 5 malpractice, is going on. What are you going to do 6 about it?" 7 That's right, is it not, Mr Poon? That's what you 8 ought to have done? 9 A. If I saw that it was Fang Sheung doing the cutting, 10 I would have done so. But I was told that those were 11 Leighton people doing the cutting, so I would think that 12 they should do the gatekeeping at an inspection level. 13 It was my managerial decision at the time. 14 Q. Anyway, you tell us in paragraph 32 that: 15 "Sometime later, Mr Leung and Mr Chu told me that 16 they had reported the matter to MTRC." 17 A. (In English) Yes. 18 Q. What do you mean by "sometime later"? 19 A. Because afterwards I heard, at meetings -- I started to 20 hear at meetings, I started to hear on site, that MTRCL 21 people were trying to catch those, about the couplers. 22 Q. Can I ask you the question again -- 23 A. It's about two weeks' time. 24 Q. Thank you. So what are we talking about now; the end of 25 August?</p>
Page 66	Page 68
<p>1 There were people there but they would not watch the 2 works. They would just sit in their own foremen's 3 office; they would go out for tea. And other than when 4 the MTRCL came, they wouldn't show up. 5 Q. It sounds a bit like a holiday camp, Mr Poon, if you are 6 right. But what you are saying, are you, is that there 7 were Leighton supervisors on site but, so far as you're 8 concerned, they might not have doing their job properly? 9 A. (In English) Yes. 10 Q. Right. So there were Leighton supervisors on site in 11 August 2015; correct? 12 A. In the project. 13 Q. And you could, could you not, have gone up to one of 14 those supervisors and said, "Oi, you, put your teacup 15 down, I've got something to tell you. There's a serious 16 incident, malpractice, going on here"? That would have 17 been the appropriate thing to do, wouldn't it, Mr Poon? 18 A. When I saw it, I did that. 19 Q. Well, you didn't do that, Mr Poon. 20 A. (In English) I did. 21 Q. We're talking about August. You didn't do that, 22 Mr Poon. 23 A. (In English) August, I didn't. 24 Q. Thank you. We'll come to Gabriel So and Mr Rodgers in 25 due course, but at the moment I'm in August, and I've</p>	<p>1 A. (In English) Approximate. 2 Q. Can that be translated, please? 3 MR PENNICOTT: It's "approximately". 4 MR BOULDING: All right. 5 It's clear from your statement, is it not, 6 paragraph 32, that you obviously did not ask Mr Leung or 7 Mr Chu who they had reported to in MTRC? You didn't ask 8 them that, did you? 9 A. No. 10 Q. And you didn't ask them, it's clear from your 11 statement -- you didn't ask them when they reported it, 12 did you? You didn't -- no? 13 A. No, no, I did not. 14 Q. Or where they had reported it? 15 A. No. 16 Q. Or what the MTR's response was; you didn't ask them that 17 either, did you? 18 A. The MTR's response, well, that could be seen. 19 Q. Did you ask them what the MTR's response was, Mr Poon? 20 A. No. 21 Q. It's also right, is it not, that again there's 22 absolutely no documentary evidence, is there, of this 23 alleged reporting ever happening? You've got no 24 documentary evidence, have you, Mr Poon? 25 A. (In English) No. Please refer to the MTRC report</p>

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<p>1 interviewing their staff. Their staff did witness that. 2 Q. Mr Poon -- 3 A. (In English) Somebody told that. 4 Q. I'm taking you back to August 2015, Mr Poon. I'm not 5 going to let you run away. You've got no documentary 6 evidence, have you, that this was ever reported to MTRC 7 in August 2015; correct? 8 A. (In English) Yes. 9 Q. Or at all, for that matter, have you, absolutely no 10 documentary evidence -- 11 A. (In English) No. 12 Q. -- brought into existence by China Technology -- 13 A. (In English) No. 14 Q. -- that this was ever reported to MTRC? 15 A. (In English) No. 16 Q. Well, no doubt in re-examination you will be asked to 17 produce it. 18 What I suggest to you, Mr Poon, is that if this had 19 occurred -- "if", and we don't accept for a moment that 20 it did, but if this had occurred -- and in circumstances 21 where you were so worried about the malpractice, the 22 dangerous malpractice, the obvious thing to have done 23 would have been to make a note of the fact that you had 24 reported it to MTR. That is correct, isn't it? 25 A. (In English) No.</p>	<p>1 So and Mr Rodgers of Leighton, and Mr Shieh has already 2 asked you a few questions about this, but I'd also like 3 to ask you one or two questions, please. 4 We can see, can we not, that you deal with this in 5 paragraphs 36 and 37 of your witness statement, first 6 witness statement, on page D20. 7 A. (In English) Yes. 8 Q. You say in 36: 9 "In September 2015, I reported the incidents ... to 10 Mr So ..." 11 That's Gabriel So, isn't it, could you confirm? 12 A. (In English) Yes. 13 Q. "... the then superintendent of Leighton, and Mr So's 14 superior Mr Khyle Rodgers, the then senior 15 superintendent of Leighton. I indicated to Mr So and 16 Mr Rodgers that staff members of Leighton were cutting 17 the threaded rebars. 18 Both Mr So and Mr Rodgers told me that they had no 19 knowledge of any staff members of ... doing such acts. 20 They also reassured me that they would inform their 21 staff members not to do such acts again and reassured me 22 that no similar incidents would occur again in the 23 future." 24 A. Mmm. 25 Q. And Mr Shieh, as I've said once already, cross-examined</p>
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<p>1 Q. The reason, I suggest, Mr Poon, why your statement, 2 paragraphs 30 to 32 -- and it doesn't stop here, 3 I fear -- why those paragraphs are so vague, so devoid 4 of details, is that it simply never happened, did it? 5 There was no report made to MTR in August 2015? 6 A. (In English) No. 7 Q. I also suggest -- I'll suggest it again -- or for that 8 matter at any other time? I'm suggesting that to you; 9 that's correct? You never reported it to MTRC at any 10 other time; correct? 11 A. (In English) "Any other time" means? 12 CHAIRMAN: I appreciate in translation that may be 13 difficult. What Mr Boulding is saying is that the 14 incidents that occurred in August 2015 were not reported 15 at or about the time you suggest, nor were those 16 incidents reported at any time. 17 A. (In English) No. 18 MR BOULDING: So you're disagreeing with me? 19 A. (In English) Disagree. 20 MR BOULDING: Thank you for the intervention, sir. 21 CHAIRMAN: It's just that sometimes I appreciate there can 22 be -- it's not your ambiguity, Mr Boulding, at all but 23 in translation and the like there can be. 24 MR BOULDING: Thank you very much indeed. 25 Now, I promised you that I would come to Mr Gabriel</p>	<p>1 you on this, and you insisted during the course of your 2 evidence that what you referred to took place in 3 September 2015. Do you remember giving Mr Shieh that 4 evidence? It's transcript Day 9, page 99. I don't 5 think we need to turn it up. But do you remember saying 6 that, Mr -- 7 A. (Nodded head). 8 Q. You do, you're nodding; you agree with me? 9 A. (In English) Yes. Yes. 10 Q. Thank you very much. 11 I wonder if we can have a look at a China Technology 12 press statement. It's at C24117. Thank you. 13 Here, certainly in first instance, Mr Poon, I'm 14 going to need some help from Mr Jat Sew Tong because 15 it's in Chinese. 16 If Mr Jat Sew Tong could please read in Chinese -- 17 and of course it will be translated -- the headnote and 18 the title, and down to the end of the first paragraph, 19 please. 20 MR JAT: Thank you, sir. I have to justify my presence 21 somehow. I will read it slowly: 22 "(Via interpreter) On the SCL 1112, SCL extension 23 project, someone was suspected of engaging in fraudulent 24 acts of connection of threaded bars, our company would 25 like to make the following statement:</p>

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<p>1 1. Our company's frontline staff, as early as July 2 2015, had discovered this, and when it started it was 3 just an isolated incident. The management of our 4 company know about this, and in early August 2015 had 5 reflected this to the two superintendents of Leighton 6 Asia involved and has asked for this to be stopped. 7 According to our observation, there were some 8 improvements made. Later on, we discovered the same 9 situation happening, and the situation had gone beyond 10 our control. Therefore, we had reported to the more 11 senior management of Leighton and asked for improvement. 12 And finally, in January 2017, we lodged a complaint in 13 writing to the senior management of Leighton and asked 14 for follow-up action to be taken." 15 (In English) Thank you, sir. 16 MR BOULDING: Thank you, Mr Jat. 17 I take it, Mr Poon, that as the owner of China 18 Technology, you were responsible for this press release; 19 correct? 20 A. (In English) Yes. 21 Q. And presumably you drafted it, did you not? 22 A. No. At that time, I was on the mainland. 23 Q. So who drafted this then? 24 A. Well, I made some points and it was somebody else who 25 drafted it. I wasn't in Hong Kong back then.</p>	<p>1 fists? I mean, that's simply ridiculous, Mr Poon. 2 A typo? 3 A. (In English) Is it ridiculous? 4 Q. I suggest it is. 5 A. (In English) I suggest no. 6 Q. Here, a press release you made points on, you approved 7 before it went out, refers to an important matter, 8 describes it as "August". 9 A. Mmm. 10 Q. If we look at your witness statement, you're telling the 11 learned Commissioner it's September. 12 A. Mmm. 13 Q. What's right, Mr Poon? 14 A. September. September. (Chinese spoken). 15 Q. Sorry, what did you say? 16 A. Our QC. Our Queen's Counsel. I respect you. 17 CHAIRMAN: Sorry, I'm not sure what was said there because 18 it hasn't been translated, but, Mr Poon, after a degree 19 of high tension and aggravation, we seem to have settled 20 into a rational intercourse, and I would like that to 21 continue. All right? You're being asked the questions 22 in a very moderate way by Mr Boulding -- 23 A. (In English) Okay. 24 CHAIRMAN: -- and insults, whether veiled or otherwise, do 25 not help us one bit. In fact, depending on the</p>
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<p>1 Q. But presumably, even if you'd made your points and then 2 someone else drafted it, it's something you would have 3 approved before it went out to the press; correct? 4 A. (In English) Yes. 5 Q. You've got to speak, actually. A nod doesn't come up on 6 the transcript, Mr Poon. 7 A. (In English) Yes. Yes. 8 Q. You can see that you emphasise, "We specifically state 9 as follows", and then you refer to the incidents back in 10 July 2015. Are you still with me, Mr Poon? 11 A. (In English) Yes. 12 Q. You go on to say that "after our management was informed 13 of this, we had already reflected the situation to the 14 two involved superintendent-level staff of the main 15 contractor". 16 Now, by "the two involved superintendent-level staff 17 of the main contractor", you are referring, are you not, 18 to Mr Gabriel So and Mr Khyle Rodgers? 19 A. (In English) Yes. 20 Q. But then, you see, I've got to point out to you that you 21 say you did that, in this press statement, which you 22 made some points on and then approved, in early August 23 2015; do you see that? 24 A. There was a typo. It should be early September. 25 Q. A typo? What was your member of staff typing with, his</p>	<p>1 circumstances, it can amount to a form of contempt; all 2 right? 3 A. (In English) Okay. 4 (Via interpreter) Well, I'll invite Mr Boulding not 5 to use wordings like "ridiculous" and don't point your 6 fingers at me. 7 CHAIRMAN: With respect, I've been watching Mr Boulding. He 8 hasn't pointed his fingers at you, not in an aggressive, 9 accusative -- 10 A. Yes, he did point his fingers at me. 11 CHAIRMAN: Please listen. I have a view of everything. 12 Mr Boulding has been acting in a perfectly proper way. 13 He is quite entitled to raise his hand once in a while 14 or something to that effect. I recognise an improper 15 accusatory gesture and that hasn't taken place. All 16 right? 17 A. (In English) Okay. 18 CHAIRMAN: Thank you. 19 MR BOULDING: Mr Poon, I've been observing you over the 20 course of the last three or four days, and it's fair to 21 say, is it not, that every time an error is pointed out 22 in one of your witness statements, one of your 23 documents, you do seem to get rather emotional. Would 24 that be fair comment? 25 A. (In English) Yes, a bit.</p>

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<p>1 Q. Let's see if we can agree something without getting too 2 emotional. It is right, is it not, that absolutely 3 nowhere, nowhere in this press release, do you refer to 4 the fact that the incidents back in July 2015 were 5 reported to MTR; that's correct, isn't it? 6 A. Yes, it's not mentioned. 7 Q. And again I suggest it's not mentioned because it never 8 occurred, did it? 9 A. Well, I didn't mention it doesn't mean that it never 10 happened. 11 Q. What I'm suggesting to you, Mr Poon, is that in a press 12 release of this kind, dealing with the suspected 13 incidents of false threaded rebar coupler works in the 14 Tuen Ma Line concrete slab, if, as you say, but I don't 15 accept, MTR had been told about the July incidents back 16 at the end of August by your men, you would have 17 referred to it, wouldn't you? 18 A. Well, no. The first paragraph covered briefly what 19 happened in the course of several months. Well, it was 20 an introductory paragraph. As I said yesterday, the 21 most important point lied in point number 1. 22 Q. I don't accept that for a moment, Mr Poon. It might be 23 an introductory paragraph, in paragraph 1, but you see 24 fit there, do you not, to refer to the fact that -- 25 disputed fact -- that So and Rodgers had been demanded</p>	<p>1 Leighton been told but, in addition, MTR had been told. 2 That would have been an important fact, would it not, 3 Mr Poon? 4 A. You said that informing MTR was an important fact. When 5 we drafted the press release, I gave several points to 6 the secretary to draft this report. That wasn't taken 7 into account, indeed, when we drafted the press release. 8 Q. And the reason it wasn't taken into account is because 9 it didn't occur, did it, Mr Poon? 10 A. (In English) No. 11 Q. According to So and Rodgers -- and here I'm looking at 12 paragraph 37 of your witness statement, page D20: 13 "Both Mr So and Mr Rodgers told me that they had no 14 knowledge of any staff members of Leighton doing such 15 acts." 16 Now, I'd just like to discuss that with you. 17 According to your witness statement, Mr Poon, by this 18 stage your staff had already reported the matter to the 19 MTR, hadn't they? 20 A. (In English) Yes, yes. 21 Q. If that had occurred, can I suggest it would have been 22 incredible -- incredible -- if such a serious and 23 dangerous malpractice had been reported to MTR and MTR 24 had not bothered to take it up with Leighton. That's 25 fair comment, isn't it, Mr Poon: incredible?</p>
<p>Page 78</p> <p>1 to put a stop to such incidents? That's important 2 enough for you to refer to, is it not, Mr Poon? 3 A. This was a general description of the matter here, in 4 this paragraph. I even didn't refer to Mr So and 5 Mr Rodgers here. 6 Let me reiterate, this is an introductory paragraph, 7 covering the matter generally, and the focus of the 8 press release was actually in the second paragraph. 9 Q. Well, in this press release, you are in effect alleging 10 fraud, are you not? That's what you're telling the 11 press, isn't it? You're telling the press and you are 12 telling the public -- that's what you're telling them, 13 isn't it, Mr Poon? 14 A. Well, I didn't say "fraud" or anything like that. What 15 I needed to say was put in this paragraph. You are just 16 having a mere speculation there. I was just writing out 17 the facts. 18 Q. And the facts, if they were true, are indeed very 19 important facts, are they not, Mr Poon, very important 20 facts? 21 A. Correct. 22 Q. In the light of that, I've got to suggest that 23 an important fact, if it had occurred, would have been 24 to state that not only had Leighton been told, in early 25 August -- of course that's a typo -- not only had</p>	<p>Page 80</p> <p>1 A. What they meant is they didn't know that it was Leighton 2 staff doing that. They didn't say that they had no 3 knowledge of that matter. 4 Q. Come on, Mr Poon. 5 A. (In English) No, you explain it. 6 Q. "Both Mr So and Mr Rodgers told me that they had no 7 knowledge of any staff members of Leighton doing [any] 8 such acts." 9 A. (In English) Yes, exactly. Exactly. 10 Q. What I suggest to you is that if it be the case -- and 11 I don't accept it for a moment -- that your Mr Leung and 12 your Mr Chu had told MTR that the rebar was being cut by 13 members of staff of Leighton, it's absolutely incredible 14 that MTR would not have contacted Leighton and said, 15 "Look, what's going on?" That would be incredible, 16 wouldn't it, Mr Poon? 17 A. (In English) So you mean the MTR staff are incredible, 18 is it? 19 Q. No, it's incredible -- it's incredible for you to 20 suggest that Leung and Chu had told MTR in late August 21 2015 that Leighton staff were cutting the rebar, and for 22 MTR to do absolutely nothing about it, so that when you 23 see, allegedly see, So and Rodgers in September, they 24 say, "We've got no knowledge of any staff member of 25 Leighton doing such a thing." That's simply not</p>

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<p>1 credible, is it, Mr Poon?</p> <p>2 A. So you're saying the two members of staff of Leighton</p> <p>3 are incredible? That's correct.</p> <p>4 Q. No.</p> <p>5 CHAIRMAN: No.</p> <p>6 MR BOULDING: No, Mr Poon. You know what I'm suggesting to</p> <p>7 you.</p> <p>8 A. Well, this statement records that these Leighton</p> <p>9 superintendents told me that they weren't aware that</p> <p>10 Leighton staff were cutting those bars. That is on</p> <p>11 record. That's a factual matter.</p> <p>12 Q. And there's absolutely no suggestion in your witness</p> <p>13 statement, is there, Mr Poon, that you said to So and</p> <p>14 Rodgers, "Well, that's odd, that's odd, Mr So, that's</p> <p>15 odd, Mr Rodgers. We've already told MTR. How come you</p> <p>16 know nothing about it? Have MTR not been in touch?" No</p> <p>17 suggestion you said anything like that, is there,</p> <p>18 Mr Poon?</p> <p>19 A. I didn't state that in my statement.</p> <p>20 Q. Well, you didn't state that in your statement because</p> <p>21 that's not what you said. What I'm suggesting to you is</p> <p>22 that when So and Rodgers said to you, "We've got no</p> <p>23 knowledge of Leighton staff doing this", the obvious</p> <p>24 thing for you to have said, if MTR had really been told,</p> <p>25 is, "That's odd, Gabriel, that's odd, Khyle. My men</p>	<p>1 about August 2015; correct?</p> <p>2 A. (In English) Yes. Yes.</p> <p>3 Q. We can pick that up from paragraph 33 of your first</p> <p>4 witness statement, can we not?</p> <p>5 A. (In English) Yes.</p> <p>6 Q. You say that Leighton workers were cutting threaded bars</p> <p>7 in area C1, bays 2 and 3; correct?</p> <p>8 A. (In English) Yes.</p> <p>9 Q. And they were doing it one after another using</p> <p>10 a grinding machine; correct?</p> <p>11 A. (In English) Yes.</p> <p>12 Q. A nod does not come up on the transcript. You've got to</p> <p>13 say "yes", "no", or whatever you want to say.</p> <p>14 A. I did say "yes".</p> <p>15 Q. And when Mr Pennicott asked you about this incident, you</p> <p>16 told him that the bars were bundled and that they were</p> <p>17 cut one after another; do you remember telling</p> <p>18 Mr Pennicott that?</p> <p>19 A. Yes.</p> <p>20 Q. And that led the learned Commissioner to ask you what</p> <p>21 the point was; do you remember the learned Commissioner</p> <p>22 asking you that question?</p> <p>23 A. Yes, I recall.</p> <p>24 Q. Now, you do not give any details in your statement as to</p> <p>25 exactly what was going on -- for example, you do not say</p>
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<p>1 told MTR back in August. Are you really saying you know</p> <p>2 nothing about it?" That's what you would have said, had</p> <p>3 MTR been told, isn't it, Mr Poon?</p> <p>4 A. That is your conjecture, your speculation. The reason</p> <p>5 for this happening is because I witnessed Leighton staff</p> <p>6 cutting the bars, so I contacted the Leighton</p> <p>7 superintendents and told them, and the superintendents</p> <p>8 told me that they were not aware that their staff</p> <p>9 members were doing the cutting, and that they would stop</p> <p>10 such action.</p> <p>11 Q. What I suggest to you, Mr Poon, is that this so-called</p> <p>12 notification simply didn't happen, and that's why you</p> <p>13 weren't able to say anything to So and Rodgers about MTR</p> <p>14 having been contacted. That's correct, isn't it?</p> <p>15 A. This incident and whether MTR have been notified, they</p> <p>16 are separate incidents. In the two paragraphs, I never</p> <p>17 said that I notified MTR, and if you look at the MTR</p> <p>18 notification, you have to refer to Mr Chu and Mr Leung,</p> <p>19 their portions. I had not talked about MTRCL here.</p> <p>20 Q. I have already discussed that with you, Mr Poon, and</p> <p>21 I've made my point and I trust the Commissioners have</p> <p>22 got it.</p> <p>23 I want to talk about you witnessing your first</p> <p>24 incident, or allegedly witnessing your first incident.</p> <p>25 You tell us, do you not, that you witnessed this in</p>	<p>1 how many bars were being cut, do you?</p> <p>2 A. I didn't describe how many bars were being cut, that is</p> <p>3 correct.</p> <p>4 Q. In fact, again, it's fair to say, is it not, that the</p> <p>5 description you give in paragraph 33 is indeed very</p> <p>6 vague; that's right, is it not, Mr Poon?</p> <p>7 A. I disagree.</p> <p>8 Q. But you do tell us, do you not, that you tried to stop</p> <p>9 them?</p> <p>10 A. (In English) Yes.</p> <p>11 Q. And you tried to stop them because it was a serious</p> <p>12 matter; correct?</p> <p>13 A. Because I felt that that was not a normal work procedure</p> <p>14 so I had to stop them.</p> <p>15 Q. So an abnormal work procedure, you have to stop them,</p> <p>16 and what happened? The men completely ignored you, did</p> <p>17 they not, Mr Poon?</p> <p>18 A. (In English) Yes.</p> <p>19 Q. Completely ignored you. And if -- "if" -- that be the</p> <p>20 case, can I suggest that the obvious thing for you to</p> <p>21 have done, Mr Poon, would have been to report the</p> <p>22 incident immediately to MTRC. That would have been the</p> <p>23 obvious thing to do, wouldn't it?</p> <p>24 A. At the time, I personally wasn't a site staff. I wasn't</p> <p>25 familiar with all the MTRC personnel. We had just</p>

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<p>1 entered the site not too long.</p> <p>2 Q. Mr Poon, if you persist in being evasive, this is going</p> <p>3 to take a lot longer than might otherwise be the case.</p> <p>4 You've just told the learned Commissioner that you</p> <p>5 tried to stop them.</p> <p>6 A. Yes.</p> <p>7 Q. You thought it was a serious matter.</p> <p>8 A. I felt it was abnormal, it was malpractice. You need to</p> <p>9 clarify that.</p> <p>10 Q. And it was dangerous?</p> <p>11 A. I didn't say "dangerous". I didn't say that.</p> <p>12 Q. Well, it leads to safety problems?</p> <p>13 A. I didn't say that either. This is what you said.</p> <p>14 Q. We'll look at the transcript.</p> <p>15 But, in any event, you tell us that the workers</p> <p>16 simply ignored you; they continued cutting the bars?</p> <p>17 That's right, isn't it?</p> <p>18 A. Correct.</p> <p>19 Q. I'll try again, Mr Poon. In those circumstances,</p> <p>20 I suggest that the obvious thing, the obvious thing to</p> <p>21 do, would be to report it immediately to MTR. That's</p> <p>22 right, isn't it?</p> <p>23 A. No. My choice was to contact Rodgers and Mr So.</p> <p>24 Q. Well, what I suggest to you, Mr Poon, is that -- and</p> <p>25 we've had the cross-examination from Mr Shieh as to</p>	<p>1 A. (In English) mmm. Paragraph 36.</p> <p>2 Q. That paragraph says absolutely nothing about you</p> <p>3 contacting Mr So.</p> <p>4 A. (In English) 36.</p> <p>5 Q. Then you say, "In September 2015". So how long did you</p> <p>6 wait before reporting --</p> <p>7 A. (In English) Few days.</p> <p>8 Q. A few days?</p> <p>9 A. (In English) Few days.</p> <p>10 Q. But surely an incident like this would have warranted</p> <p>11 an immediate report, wouldn't it, Mr Poon? There was no</p> <p>12 need to wait a few days, was there?</p> <p>13 A. Actually, I had told Mr Chairman previously, at the</p> <p>14 time, bear that in mind, in September, I witnessed or</p> <p>15 I had estimated the number of -- it wasn't to the extent</p> <p>16 that there was an immediate danger.</p> <p>17 Q. And in circumstances where you say that your staff,</p> <p>18 Mr Chu and Mr Leung, had already reported the matter to</p> <p>19 the MTRC -- that's your evidence, isn't it?</p> <p>20 A. Yes.</p> <p>21 Q. And obviously, according to you, the MTRC had not done</p> <p>22 anything about it; correct?</p> <p>23 A. They did. I heard the MTRC went after them at the</p> <p>24 meetings.</p> <p>25 Q. Oh, really? Where do we see this? MTR did what?</p>
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<p>1 whether in fact you contacted Mr So and Mr Rodgers and</p> <p>2 what went on, and I'm not going to repeat that -- even</p> <p>3 if it's right, even if it's right that you reported it</p> <p>4 to Mr So and Mr Rodgers, in circumstances where the</p> <p>5 Leighton people simply ignored it -- simply ignored it,</p> <p>6 what you were telling them to do -- you really ought to</p> <p>7 have gone straight to MTR. That's what you ought to</p> <p>8 have done, isn't it, Mr Poon?</p> <p>9 A. It's because I saw that they were Leighton workers, from</p> <p>10 their outward appearance, so I called up the managerial</p> <p>11 staff of Leighton, the superintendent. That is my</p> <p>12 first-hand experience.</p> <p>13 Q. When did you call up the managers of Leighton?</p> <p>14 A. Well, you like to be careful with words. I had</p> <p>15 contacted the superintendents, not the managers.</p> <p>16 Q. When did you do that?</p> <p>17 A. It was a day or two after.</p> <p>18 Q. Really?</p> <p>19 A. (In English) Yes.</p> <p>20 Q. Where do I find that in any of your witness statements?</p> <p>21 A. The next paragraph, paragraph 35.</p> <p>22 Q. "In or about early ... 2015, Mr But also reflected to me</p> <p>23 that similar incidents occurred. He also attempted to</p> <p>24 stop those doing what they were doing, namely cutting</p> <p>25 the threaded rebars but, again, to no avail."</p>	<p>1 A. Let me repeat. Even in the reports, the MTR staff said</p> <p>2 that somebody told them there were cutting of bars.</p> <p>3 Several of their staff said that but they didn't mention</p> <p>4 names, that's all. MTR on 15 June reported to the</p> <p>5 government they had said that.</p> <p>6 Q. I'm talking about 2015, Mr Poon.</p> <p>7 A. You are questioning the credibility of this statement,</p> <p>8 and I'm telling you, in the MTRC statements, they had</p> <p>9 also corroborated this incident, so your questioning of</p> <p>10 the credibility or veracity, this line of thinking, it's</p> <p>11 rather difficult. That's all.</p> <p>12 Q. They do not, Mr Poon -- they do not accept that they</p> <p>13 were told in August or September, or at all --</p> <p>14 A. (Overspeaking) (Chinese spoken) --</p> <p>15 Q. -- before May 2015, about this.</p> <p>16 A. The MTRC report is a summary. I didn't listen to the</p> <p>17 audio tapes. I remember they had audio tapes in the</p> <p>18 bundle. But in the MTRC report, between D1 and 42, it's</p> <p>19 stated very clearly. There, the MTR frontline staff had</p> <p>20 heard the reports, and if you want to go into greater</p> <p>21 detail, they had included every person's audio files,</p> <p>22 but I didn't listen to them.</p> <p>23 Regarding the timing, it's not made clear in the</p> <p>24 report but MTRC, the inspectorate staff had explained</p> <p>25 that somebody had told them.</p>

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<p>1 Q. That's simply not correct, Mr Poon. We're talking about 2 a period -- 3 A. We can look back at documents, if you think it's 4 incorrect. You can go back and look at it, if you 5 haven't read them. 6 Q. Don't worry -- 7 CHAIRMAN: All right, Mr Poon. We'll consider that. 8 WITNESS: (In English) Thank you. 9 MR BOULDING: What I'm suggesting, Mr Poon, is at the time, 10 the appropriate thing for you to have done would have 11 been to have contacted MTRC and said, "Look, do you know 12 this malpractice is going on", and you never did it, did 13 you? 14 A. I'm a businessman. If I can approach MTR in a personal 15 capacity at the time, because the works had just 16 started, that would lead to a poor working relationship 17 and atmosphere. 18 Q. Come, come, Mr Poon. That's a very silly answer, 19 I suggest. 20 A. I object. I don't like you to use words such as "silly" 21 and "ridiculous". If I were to use similar words with 22 you, if you accept that, then we can go on. 23 Q. Let me use the phrase "non-credible". Do you understand 24 the phrase "non-credible"? 25 A. (In English) Welcome. Welcome.</p>	<p>1 CHAIRMAN: Yes, it is. I'm a little concerned as to 2 progress today, Mr Pennicott. That's not a criticism in 3 any way, but we had what perhaps were optimistic 4 estimates yesterday. Is it likely we won't finish 5 today? 6 MR PENNICOTT: I think it's highly likely we won't finish 7 today with Mr Poon. 8 CHAIRMAN: All right. We can finish on Monday. 9 MR PENNICOTT: But I'm not suggesting anyway there should be 10 any curtailment. Obviously, with greatest of respect, 11 Ms Chong was about three times over her estimate. 12 CHAIRMAN: I'm not suggesting that. I think Mr Poon's 13 evidence is so central to -- 14 MR PENNICOTT: Absolutely, sir. 15 CHAIRMAN: -- the provenance of all the issues that are 16 consequential upon his evidence, that we really have to 17 time whatever time is necessary. 18 MR PENNICOTT: I'm afraid so. 19 CHAIRMAN: I'm sure you understand that, Mr Poon. 20 WITNESS: (In English) Okay. 21 CHAIRMAN: So we'll see how things go, Mr Poon, but it is 22 likely that you may have to come back on Monday. 23 Unfortunately there is no suggestion we can do this 24 tomorrow because Prof Hansford has an engagement already 25 put firmly into his diary, so we will continue on Monday</p>
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<p>1 Q. I suggest that that is simply a non-credible answer. 2 A. (In English) Disagree. 3 Q. You're saying that as businessman, if you had gone to 4 MTR and said to MTR, "Look, MTR, do you know this 5 malpractice is going on? It's giving rise -- can give 6 rise to safety considerations" -- you're suggesting, are 7 you, that that would have deleteriously affected your 8 relationship with the MTR? Is that what you're really 9 telling the Commission? 10 A. (In English) With Leightons. With Leightons. In the 11 stage of the project execution. 12 Q. So are you saying then that you didn't tell the MTR 13 because you didn't want to fall out with Leightons? Is 14 that your evidence? 15 A. I chose the most appropriate method to deal with the 16 incident. There might have been many options in front 17 of me. I could have told MTRCL; I think I did that. 18 And then second I approached the senior management of 19 Leighton to resolve the matter. And I chose the second 20 option. I thought it would be more effective. 21 Q. And when it didn't work the obvious thing to do would 22 have been to go to MTR? 23 A. Yes. 24 MR BOULDING: Thank you. 25 If that's a convenient moment, sir.</p>	<p>1 if we don't complete ourselves this afternoon. 2 MR PENNICOTT: Yes, sir. 3 CHAIRMAN: Thank you. 4 (1.00 pm) 5 (The luncheon adjournment) 6 (2.18 pm) 7 CHAIRMAN: Good afternoon. I see it's nearly 20 past. The 8 Commission apologises for keeping you waiting. 9 MR BOULDING: Good afternoon, Mr Poon. Before we go on and 10 discuss further the alleged incident of rebar cutting, 11 I've been asked to take up a point arising out of this 12 morning's discussions concerning your press release. 13 That's C24117. 14 Do you remember us discussing a press release? 15 A. (In English) Yes. 16 Q. And you told the learned Commissioner that you made 17 a few points, someone else typed it but you nevertheless 18 approved it before it went to the media; correct? 19 A. Yes. 20 Q. I suggested to you this morning, did I not, that if -- 21 "if" -- there had really been a notification to MTR back 22 in August or early September of the alleged rebar 23 cutting, it ought to have been in this press release; do 24 you remember me suggesting that to you? 25 A. (In English) Yes.</p>

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<p>1 Q. And I said, amongst other things, it ought to have been 2 there because this press release was referring to 3 suspected fraud; do you remember me saying that? 4 A. Yes, you did say that. 5 Q. The transcript at [draft] page 78, lines 13 onwards -- 6 I don't think there's any need to turn it up but if 7 I could be permitted to read from it, please -- this is 8 me, Mr Poon: 9 "Well, in this press release, you are in effect 10 alleging fraud, are you not? That's what you're telling 11 the press, isn't it? You're telling the press and you 12 are telling the public -- that's what you're telling 13 them, isn't it, Mr Poon?" 14 And your answer is: 15 "Well, I didn't say "fraud" or anything like that." 16 Do you remember that exchange this morning with me, 17 Mr Poon? 18 A. Yes. 19 Q. I am told, and no doubt the Chinese scholars in the room 20 will confirm, that the first line of the press 21 release -- it's up on the big screen again -- says, when 22 translated: 23 "In relation to the suspected incidents of 24 fraudulent threaded rebar connection works." 25 That's what it says in English, is it not?</p>	<p>1 the correct word. He didn't mention -- in that 2 paragraph it's "falsification" rather than "fraud". 3 CHAIRMAN: All right. Does that affect the question? 4 MR PENNICOTT: It doesn't, because Mr Boulding is asking 5 questions on falsification now, so that's fine. 6 CHAIRMAN: That's right, yes. 7 MR BOULDING: Let me put the question again. You would 8 accept, would you not, that an allegation of suspected 9 falsification is still a serious allegation; that's 10 correct, is it not? 11 A. I'm neutral. Whether it's serious, I definitely think 12 it's less serious than fraud. I was just giving 13 a narration of a case. I never mentioned severity of 14 that. 15 Q. You're neutral; is that really your evidence to the 16 learned Commissioner? 17 A. Okay, I won't use the word "neutral". It's just that 18 I gave a narration of a case. I did not describe the 19 severity of that. 20 Q. I don't want to waste too much time on this, because 21 I think we all know what the obvious answer is. 22 A. (In English) Thank you. 23 Q. And I'm going to suggest to you that the obvious answer, 24 if you were being truthful, is that an allegation of 25 a suspected falsification is a serious allegation, is it</p>
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<p>1 A. "Suspected fraud" or "suspected falsification" is not 2 the same as "fraud"? 3 Q. Oh. So you are referring to fraud but suspected fraud? 4 A. "Falsification" or "fraud" are two separate words. 5 Q. Is that what you're doing? 6 A. What I meant was suspected falsification. This is 7 a totally different matter from fraud. 8 Q. Well, I'm told that it refers in Chinese to "suspected 9 incidents of fraudulent threaded rebar connection" in 10 the paragraph immediately under the heading "Press 11 release". Is that something you accept or do not 12 accept? 13 A. I don't accept "fraud". I made it very clear in 14 Chinese, "suspected", and "falsification". There's no 15 such word as "fraud" there. 16 Q. So the difference between us is that you say you don't 17 say "fraud" but you would accept that you are referring 18 to "suspected falsification"? 19 A. Yes. 20 Q. So, even assuming it means in Chinese what you say, 21 I suspect you would accept, would you not, that 22 an allegation of suspected falsification is indeed 23 a serious allegation, is it not? 24 A. (Chinese spoken). 25 MR TO: Mr Chairman and, I think the word "falsification" is</p>	<p>1 not? 2 A. (Chinese spoken). 3 CHAIRMAN: In these circumstances, namely relating to 4 cutting threaded bars and the like, cutting the threads 5 off rebars. 6 A. Yes. 7 (In English) Yes. 8 MR BOULDING: Thank you. It's miraculous how when often the 9 judge or the chairman repeats an answer that counsel 10 gets a negative answer to, a truthful answer is given, 11 Mr Poon. 12 But anyway let's move on and continue dealing, if we 13 may, with the first incident. 14 A. I object to your comment. I object to your comment. 15 I object to your comment just now. 16 CHAIRMAN: All right. 17 MR BOULDING: The first incident is also referred to, is it 18 not, in your police statement? 19 A. You are referring to the first line in the press 20 release? 21 Q. No, no. We're moving on. I've just told you. We're 22 dealing with the first incident of alleged rebar 23 cutting. 24 A. (In English) Okay. 25 Q. And if you go to your police statement of 10 July</p>

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<p>1 2018 -- it starts, in English, at D765.1.</p> <p>2 A. (In English) Yes.</p> <p>3 Q. And if you go to paragraph 5.</p> <p>4 A. (In English) Yes.</p> <p>5 Q. That's on page, for me anyway, D765.2, you refer here,</p> <p>6 do you not, to the first incident which you also deal</p> <p>7 with in your Commission witness statement, your first</p> <p>8 witness statement; that's right, isn't it, Mr Poon?</p> <p>9 A. Correct.</p> <p>10 Q. Thank you. You tell us -- and I'm reading here from the</p> <p>11 last sentence or two:</p> <p>12 "I observed the entire incident for about 2 minutes,</p> <p>13 and in total three persons cut short the threaded heads</p> <p>14 of 10 rebars and screwed one to two rebars (with</p> <p>15 threaded heads being cut short) into the retaining</p> <p>16 wall."</p> <p>17 That's what you saw, isn't it?</p> <p>18 A. Yes.</p> <p>19 Q. Then you say, "I left afterwards."</p> <p>20 A. Mmm.</p> <p>21 Q. We can also see, can we not, if we look at the fifth</p> <p>22 line, that they managed to do all that with a grinding</p> <p>23 machine?</p> <p>24 A. Yes.</p> <p>25 Q. Before we discuss what you have described, it is right,</p>	<p>1 the end, can you pick up for me the sentence beginning:</p> <p>2 "I saw those workers had cut around six rebars at</p> <p>3 the threaded ends and then screwed the rebars into</p> <p>4 couplers at the midsection of the connecting platform at</p> <p>5 area B (exact location forgotten)."</p> <p>6 Do you see that?</p> <p>7 A. Yes, I see it.</p> <p>8 Q. You do?</p> <p>9 A. Yes, I see it.</p> <p>10 Q. Importantly, for present purposes, Mr Li goes on to say:</p> <p>11 "As I saw it, they took around 1 minute to finish</p> <p>12 cutting one threaded section of the rebar."</p> <p>13 Do you see that?</p> <p>14 A. Yes, I see it.</p> <p>15 Q. Now let's see what Mr But Ho Yin says. He's another one</p> <p>16 of your employees, is he not? That's a question: he's</p> <p>17 another one of your employees, is he not?</p> <p>18 A. Because he left our company once, so at the time when he</p> <p>19 gave the statement I remember he was not our employee.</p> <p>20 Q. But he was an employee so far as this particular</p> <p>21 construction site was concerned, wasn't he?</p> <p>22 A. (In English) Yes.</p> <p>23 Q. Thank you. If we look at his police statement, 12 July</p> <p>24 2018 -- perhaps you could be kind enough to go to</p> <p>25 D921.1, that's the English version. Then, if you would</p>
<p>Page 98</p> <p>1 is it not, that the contention by you that you observed</p> <p>2 the incident for about two minutes and witnessed the</p> <p>3 workers cutting ten-plus threaded rebars, plus</p> <p>4 installing one or two rebars into the retaining wall in</p> <p>5 those two minutes, is not referred to in your Commission</p> <p>6 witness statements; that's correct, isn't it?</p> <p>7 A. Not referred, did you say?</p> <p>8 Q. Not referred to, it's not referred to. You don't make</p> <p>9 any mention of that in your --</p> <p>10 A. (In English) Because translation, can you repeat?</p> <p>11 Q. The observation you contend you made, in the penultimate</p> <p>12 sentence of paragraph 5 of your police witness</p> <p>13 statement, is not referred to, is it, in any of your</p> <p>14 Commission witness statements?</p> <p>15 A. Correct. Correct.</p> <p>16 Q. What I'm going to suggest is that it's also inconsistent</p> <p>17 with the evidence from other China Technology witnesses.</p> <p>18 First of all, please, Mr Poon, I'd like you to go to</p> <p>19 Mr Li, that's L-I, police statement, which is at D751.</p> <p>20 A. (In English) Okay.</p> <p>21 Q. This is a police statement of 7 August 2018, and I'm</p> <p>22 looking at paragraph 7 which starts on page D754.2 but</p> <p>23 goes overleaf to 754.3.</p> <p>24 A. (In English) Yes.</p> <p>25 Q. If you were to look about five or six sentences up from</p>	<p>Page 100</p> <p>1 be kind enough to turn over to 921.4.</p> <p>2 A. (In English) Yes.</p> <p>3 Q. About halfway down paragraph 12, you can see, can you</p> <p>4 not, that he says:</p> <p>5 "I saw that the Leighton's workers had cut around</p> <p>6 10 rebars at the threaded sections and thereafter the</p> <p>7 Leighton's workers screwed the rebars from bottom to the</p> <p>8 top (of around 3 metres tall) into the couplers of the</p> <p>9 'D-wall'."</p> <p>10 Do you see where he says that?</p> <p>11 A. (In English) Yes.</p> <p>12 Q. Then if you read on:</p> <p>13 "I saw they took approximately 1 minute to finish</p> <p>14 cutting the threaded head of one rebar."</p> <p>15 Do you see that?</p> <p>16 A. (In English) Yes.</p> <p>17 Q. If we look at your police statement of 17 July -- and we</p> <p>18 can pick that up in English at D821.3.</p> <p>19 A. (In English) Yes.</p> <p>20 Q. It starts at 821.1 but 821.3, paragraph 6:</p> <p>21 "Regarding the said 3 methods to solve the problem</p> <p>22 of damaging of couplers, the first method saves most</p> <p>23 time and the salary of workers."</p> <p>24 Just to put this in context, you're talking about</p> <p>25 the method you refer to in paragraph 5 immediately</p>

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<p>1 above, aren't you? That's right?</p> <p>2 A. (In English) Yes.</p> <p>3 Q. Thank you. You say:</p> <p>4 "It took 4 to 8 hours to replace the damaged coupler</p> <p>5 with another coupler that has not been damaged. And it</p> <p>6 took about 10 odd seconds to cut short a rebar with</p> <p>7 threaded heads."</p> <p>8 Now, it's right, is it not, Mr Poon, that your</p> <p>9 evidence as to how long it took to cut a threaded rebar</p> <p>10 is palpably inconsistent in terms of time with the</p> <p>11 evidence of China Technology's witnesses Mr Li and</p> <p>12 Mr But; correct?</p> <p>13 A. In terms of seconds, yes.</p> <p>14 Q. Well, in terms of time; that's right, isn't it? They're</p> <p>15 saying it took a minute. You're saying it took ten-odd</p> <p>16 seconds.</p> <p>17 A. I said yes. I said yes.</p> <p>18 Q. Good. What I suggest to you is that whichever time is</p> <p>19 accurate -- whichever time is accurate -- your statement</p> <p>20 to the police that the workers cut ten-plus threaded</p> <p>21 rebars, and also installed one or two of those threaded</p> <p>22 rebars within the two minutes you were watching them,</p> <p>23 simply cannot be right, can it, Mr Poon? It cannot be</p> <p>24 right.</p> <p>25 A. Well, let's take a look at that particular paragraph.</p>	<p>1 were attracted by the sparks?</p> <p>2 A. (In English) In English, okay?</p> <p>3 Q. Where do you say you were attracted by the sparks?</p> <p>4 A. I didn't say "sparks". Well --</p> <p>5 Q. You did, you did.</p> <p>6 A. I'm describing the situation. I noticed that they were</p> <p>7 using grinding machines to cut the rebars. Our work was</p> <p>8 quite far away, around 30 to 40 metres away from them.</p> <p>9 Then I walked nearer, and I stopped there and observed</p> <p>10 for two minutes, and I noticed that they cut ten or so</p> <p>11 rebars, and a couple of them, one to two, were screwed</p> <p>12 in. It didn't mean that I was staying there for two</p> <p>13 minutes observing actually that they have cut ten or so</p> <p>14 rebars and then screwed one to two onto the retaining</p> <p>15 wall. That's what I meant.</p> <p>16 Q. Well, again, Mr Poon, when you are pulled up about</p> <p>17 something you say in a statement, in this instance that</p> <p>18 you signed off, and given to the Hong Kong Police, you</p> <p>19 say, "I didn't quite mean to say that."</p> <p>20 I'm going to have to read it to you again, Mr Poon,</p> <p>21 because it's --</p> <p>22 A. I think I would not agree with you, because you were</p> <p>23 quoting things out of context. Mr Boulding, you were</p> <p>24 just quoting a couple of sentences within a whole</p> <p>25 paragraph, and you assumed my meaning, and you asked me</p>
<p>Page 102</p> <p>1 Q. If you like.</p> <p>2 A. (In English) I'd like to.</p> <p>3 Q. It's D765.2.</p> <p>4 A. Can you give me the page number of the Chinese version;</p> <p>5 761 or what?</p> <p>6 Q. You will find it starts at 760, D760. As you might</p> <p>7 expect, I'm having to work from the English version,</p> <p>8 which is at D765.2, and it's the penultimate sentence of</p> <p>9 paragraph 5. This is you speaking, Mr Poon:</p> <p>10 "I observed the entire incident for about 2 minutes,</p> <p>11 and in total the three persons cut short the threaded</p> <p>12 heads of 10 rebars and screwed one to two rebars (with</p> <p>13 threaded heads being cut short) into the retaining</p> <p>14 wall."</p> <p>15 A. Mmm.</p> <p>16 Q. That simply cannot be correct, can it, on the basis of</p> <p>17 what your employees say?</p> <p>18 A. Disagree. Disagree. You are quoting things out of</p> <p>19 context.</p> <p>20 Q. Why is that?</p> <p>21 A. The entire paragraph, I described the entire situation.</p> <p>22 At first, I was attracted to the sparks coming out of</p> <p>23 the cutting. I was just 30 to 40 metres away, just the</p> <p>24 length of two rooms.</p> <p>25 Q. Just stop. Where do you say in that paragraph that you</p>	<p>Page 104</p> <p>1 to agree to that. Why did I have to put the sentences</p> <p>2 into the paragraph then, if that is the case,</p> <p>3 Mr Boulding?</p> <p>4 Q. Mr Poon, I'm only working from the English version, but</p> <p>5 I'm told it's an accurate translation. I'll give you</p> <p>6 one last opportunity. You say:</p> <p>7 "I observed the entire incident ..."</p> <p>8 That's what you say; do you see that?</p> <p>9 "... the entire incident for about 2 minutes, and in</p> <p>10 total the three persons cut short the threaded heads of</p> <p>11 10 rebars and screwed one to two rebars (with threaded</p> <p>12 heads being cut short) into the retaining wall. I left</p> <p>13 afterwards."</p> <p>14 What I suggest to you, Mr Poon: it's perfectly</p> <p>15 plain, is it not, what you are saying there?</p> <p>16 A. Disagree.</p> <p>17 Q. And in those two minutes, I suggest to you, Mr Poon,</p> <p>18 it's actually impossible, having regard to what your</p> <p>19 employees say, Mr But and Mr Li, that you could have</p> <p>20 watched ten-plus threaded rebars being cut, and one to</p> <p>21 two threaded rebars being screwed into the couplers.</p> <p>22 That's simply not possible, is it?</p> <p>23 A. Well, let me reiterate. You are quoting things out of</p> <p>24 context.</p> <p>25 CHAIRMAN: Sorry, why is that quoted out of context?</p>

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<p>1 A. This is the entire thing, the entire incident. That 2 includes the minute that I walked from a distance 30 to 3 40 metres away to that actual place -- 4 CHAIRMAN: I appreciate that. I still don't quite 5 understand. "I observed the entire incident for about 6 2 minutes" -- are you saying that's from when you first 7 saw what was happening, to going across to them to talk 8 to them? 9 A. I walked over there and I stood there for around two 10 minutes and I saw that ten or so had been cut and one or 11 two screwed. Because after they cut the bar, some of 12 the threads were on the ground, so I saw that happening. 13 So the threads, the ends of the threads, were left on 14 the ground -- 15 CHAIRMAN: So you're not saying you saw ten-odd bars 16 actually in the process of being cut and that cutting 17 being completed; you are saying, as I understand it, 18 that in the time that you viewed the incident, there had 19 to have been at least ten rebars that either were being 20 cut or had been cut? 21 A. (In English) Yes. Yes. More than ten. Something about 22 ten to 15, in the Chinese. 23 MR BOULDING: So what you're telling the learned 24 Commissioner now is something over and above what you 25 told the Hong Kong Police Force at the time you made</p>	<p>1 were doing, namely cutting the threaded rebars but, 2 again, to no avail." 3 Correct? 4 A. (In English) Yes. 5 Q. And, as I understand it, you are reporting to the 6 learned Commissioners what you say Mr But told you? 7 A. (In English) Yes. 8 Q. If we look at Mr But, we can see that he gives some 9 evidence that you might want to consider. If you would 10 be kind enough to go to -- I think yours may well be at 11 D873 -- sorry, it might be -- I'll call out the English 12 number, which is at D909. No doubt if you need it, 13 Mr Poon, you will be provided with a Chinese version, 14 but this is a statement that Mr But signed off on 15 19 September 2018 and then came to give evidence on. 16 You're aware of that, are you not? 17 A. Yes. I have not read through it in detail, somebody 18 else's witness statement, but I know about it. 19 Q. Good. 20 Then if we were to go to page D912 -- 21 A. (In English) Yes. 22 Q. -- do you see paragraph 9 there? 23 A. (In English) Yes. 24 Q. He is talking, is he not, about people cutting the 25 threaded rebar of steel threads; correct?</p>
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<p>1 this statement, isn't it? 2 A. Well, it's the same thing. I think you are just quoting 3 out of context. 4 MR SO: Sir, I think the English translation would have 5 missed because in Chinese, it says "(Chinese spoken)". 6 CHAIRMAN: Sorry, I've got two lots of voices coming at me. 7 Let the translation be finished first. 8 Yes. 9 MR SO: In Chinese, it is "(Chinese spoken)". So if 10 a direct translation, it would be "ten-odd threaded 11 rebars", but in the English translation it is "heads of 12 10 rebars". So it would be "ten-odd". 13 MR BOULDING: Anyway, Mr Poon, you've got the point. Let's 14 go back to your first statement, if I may, page D20. 15 You've got a heading there, have you not, "C2. 16 Reporting the incidents to Leighton in September 2015"; 17 do you see that? 18 A. (Chinese spoken). 19 (In English) Yes. 20 Q. Then in paragraph 35 you tell the learned Commissioners: 21 "In or about early September 2015, Mr But also 22 reflected to me that similar incidents occurred." 23 A. (In English) Yes. 24 Q. Then you say: 25 "He also attempted to stop those doing what they</p>	<p>1 A. (In English) Yes. 2 Q. He talks, does he not, in paragraph 10 about his 3 training and his knowledge; right? 4 A. (In English) Yes. 5 Q. Then if I could refer you to paragraph 11: 6 "The incidents I observed as stated in paragraphs 9 7 to 10 hereinabove happened on two occasions in 8 September 2015." 9 So far, so good? 10 A. Mmm. 11 Q. "Although I found the cutting of the threaded rebars 12 abnormal, I did not tell anyone nor did I stop them at 13 that time as these were not works that Chinat were 14 responsible for." 15 Do you see that? 16 A. (In English) Yes. 17 Q. So what I suggest to you is that it's absolutely 18 impossible for Mr But to have told you, in early 19 September, that he attempted to stop the cutting 20 because, as he came and told the learned Commissioner 21 only last week, he didn't tell anyone and nor did he 22 stop them. 23 A. I could not answer on behalf of Mr But. This is 24 Mr But's witness statement. I would refer to my witness 25 statement only.</p>

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<p>1 Q. Well, it's a pretty simple point, Mr Poon. Mr But came 2 and told the learned Commissioner on oath that he never 3 told anyone. Now, that obviously includes you. And yet 4 you are here today seeking to be believed, telling the 5 learned Commissioner, notwithstanding what Mr But said, 6 that Mr But told you that he tried to stop people. That 7 can't be right, can it? 8 A. This is what I recall. I recall clearly Mr But told me 9 in September, and I wrote that in my witness statement. 10 Q. Well, it conflicts, does it not, with what Mr But has 11 told the learned Commissioner? There's a conflict 12 between what you say and what Mr But says; that's right, 13 isn't it? 14 A. Well, on this point, there were conflicts between my 15 witness statement and Mr But's evidence. 16 Q. And it's not the first one and it won't be the last one, 17 Mr Poon. 18 Now, here we're talking, are we not, about a lunch 19 meeting, Mr But is; do you see paragraph 12: 20 "In a lunch meeting in or about late September 21 2015 ..." 22 Do you see that? 23 A. Yes. 24 Q. And my understanding is that lunch meetings were 25 a regular feature of China Technology's working day; is</p>	<p>1 A. This is not what I said. This is what Mr But says. 2 Q. He says you said -- 3 A. You are talking about D912? This is Mr But's witness 4 statement. 5 Q. I understand that, and Mr But came along and told the 6 learned Commissioners on oath that "After the lunch 7 meeting, Mr Poon said he would report the matter to 8 MTRC." 9 Did you make that statement, Mr Poon, at a lunch 10 meeting in or about late September 2015? 11 A. I can't remember. 12 Q. Are you sure about that? 13 A. I can't remember. 14 Q. Well, just assume that you did make that statement. It 15 would be right, would it not, that you didn't do what 16 you said you were going to do? You didn't report it to 17 MTRC, did you? 18 A. What you said seemed to be illogical. 19 (In English) Please repeat. 20 Q. Let me put the question again. If you said what Mr But 21 says you said, that you would report the matter to the 22 MTRC, you didn't do that, did you? You didn't report 23 the matter of the threaded rebars being cut to the MTRC; 24 that's something you did not do, isn't it? 25 A. Well, if we're talking about mid-September, then I had</p>
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<p>1 that fair comment? 2 A. Yes. 3 Q. And my understanding is that you would call the workers 4 in and you would discuss matters of interest, including, 5 for example, progress? 6 A. Incorrect. 7 Q. Oh. What would you discuss then? 8 A. You talked about workers. I'm not calling in the 9 workers. I am calling in the supervisors. 10 Q. The supervisors? Don't supervisors do any work? 11 A. I don't describe them as workers. If you want to be 12 fastidious about words, then I will be fastidious about 13 words with you. 14 Q. You are not that fastidious about words, though, in your 15 witness statement, are you? 16 A. I'm not as smart as you. 17 CHAIRMAN: All right, gentlemen. Thank you, Mr Poon. Thank 18 you, Mr Boulding. 19 MR BOULDING: Let's have a look at paragraph 13 to see what 20 Mr But says. 21 A. (In English) Okay. 22 Q. "After the lunch meeting" -- and this is the lunch 23 meeting in or about late September 2015 -- "Mr Poon said 24 he would report the matter to MTRC." 25 Is that something you said?</p>	<p>1 not reported the matter, for myself. As to whether 2 I said something like that to Mr But, then I can't 3 remember. 4 Q. Just to conclude this part of our discussion -- 5 A. Yes. 6 Q. -- according to your evidence, China Technology, in the 7 form of Mr Leung and Mr Chu, had already reported the 8 malpractice to MTR; that's your evidence, isn't it? 9 That's what we discussed before lunch? 10 A. Yes, I think so. 11 Q. Notwithstanding that alleged reporting, it's right, is 12 it not, that the malpractice nevertheless continued? 13 A. Yes. 14 Q. Indeed, you had even witnessed an incident yourself, had 15 you not? 16 A. Yes. 17 Q. And the situation was, was it not, that Leighton workers 18 had even ignored you, hadn't they, Mr Poon? 19 A. Correct. 20 Q. In those circumstances, Mr Poon, I suggest that you 21 ought to have raised it with MTR or even government; 22 that's fair comment, is it not? 23 A. I think it would not be reasonable. If it was 24 reasonable, then the MTR themselves, they should have 25 reported it to the government. On page B5, the MTR</p>

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<p>1 inspectors had admitted that someone told them they were 2 aware; why didn't they make a report? 3 Q. That report we'll come to in due course, Mr Poon. But 4 that report makes it clear that MTR were not saying the 5 matter had been reported to them by you. 6 A. You can verify that later. 7 Q. Don't worry, we will. 8 Now, I'd like to go on to the second occurrence, 9 please, that you deal with. This is in your first 10 witness statement again -- 11 A. (In English) Yes. 12 Q. -- at paragraphs 39 to I think paragraph 40. 13 A. Yes. 14 Q. You say, in paragraph 39: 15 "Between 15 to 20 September 2015, I invited both 16 Mr So and Mr Rodgers for a site inspection. During the 17 inspection, all three of us saw one staff member of 18 Leighton cutting the threaded rebars using a hydraulic 19 disc cutter." 20 A. Yes. 21 Q. "I immediately approached that person and tried to stop 22 him from cutting the threaded rebars. Nonetheless, 23 Mr So stopped me and asked, rhetorically, 'why would it 24 be a problem to cut the threaded rebars?' Mr So, in 25 front of me, asked that staff member to continue with</p>	<p>1 line 3, and we can see that you're being questioned 2 about paragraph 36 of your first witness statement. 3 A. (In English) Yes. 4 Q. "In September 2015, I reported the incidents in August 5 2015 to Mr So ... and ... Mr Rodgers ... I indicated to 6 Mr So and Mr Rodgers that staff members ... were cutting 7 the threaded rebars." 8 Are you still with me? 9 A. Yes. 10 Q. "Both Mr So and Mr Rodgers told me that they had no 11 knowledge ... They also reassured me that they would 12 inform their staff members not do such acts again and 13 reassured me that no similar incidents would occur again 14 in the future." 15 A. Yes. 16 Q. "Question: Pausing here, you are not saying in these 17 two paragraphs that Rodgers directed any cutting 18 activities, are you? These two paragraphs didn't say 19 Rodgers directed any activities; do you agree? 20 Answer: I agree that in September I did not use the 21 word 'directed', but after September, when they 22 purchased new cutting machine, when they cut the bars 23 secretly, I then began to think it was planned and 24 directed." 25 What I've got to suggest is that in the light of the</p>
<p>Page 114</p> <p>1 what he was doing, namely cutting the threaded rebars. 2 I (secretly) took out a Huawei mobile phone, which 3 belongs to Chinat [China Technology], and took 4 2 photographs and a video clip of approximately 10 odd 5 seconds." 6 A. Correct. 7 Q. Now, at this stage, notwithstanding the fact that you'd 8 reported the matter to Leighton's Mr So and 9 Mr Rodgers -- 10 A. Correct. 11 Q. -- you describe a situation, do you not, in which the 12 Leighton workers were openly cutting threaded bars in 13 front of the three of you? 14 A. Correct. 15 Q. And by this time, you tell the learned Commissioners 16 that they were using a hydraulic disc cutter? 17 A. Yes. 18 Q. And this is, what, between 15 and 20 September 2015? 19 A. Yes. 20 Q. Is this the new cutter which either supplemented or 21 replaced the grinder? 22 A. Yes. 23 Q. I wonder how that can be the case, Mr Poon. If we could 24 look at the transcript for Day 9, and if you would be 25 kind enough to go to page 102. I'll pick it up at</p>	<p>Page 116</p> <p>1 evidence you gave there, it cannot possibly have been 2 the alleged new hydraulic disc cutter at this time 3 because, as you've said, that was not purchased until 4 after September? 5 A. (In English) Disagree. 6 (Via interpreter) Actually, paragraph 36 on 7 page 102, line 3, the question on paragraph 36, it was 8 asking about paragraph 36 and I said afterwards. 9 Q. I certainly agree, you were asked about paragraph 36, 10 and I've read what you said, and on any fair 11 interpretation of what you've said, Mr Poon, you told 12 the learned Commissioners that the new cutter was bought 13 after September 2015. So, in the light of this 14 evidence, what you say here simply cannot be correct, 15 can it? They couldn't have used the hydraulic disc 16 cutter in September because it hadn't been purchased by 17 then? 18 A. Well, September -- let's go take a look at pictures. 19 Whether the hydraulic cutter was already being used -- 20 can we go and take a look at pictures? 21 Q. No. I'm going to come to that in due course. 22 A. Are you afraid that the pictures are telling you what 23 you say is incorrect? 24 Q. I'm not afraid of anything you say, Mr Poon. We'll come 25 to those pictures in due course, and I'm going to</p>

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<p>1 suggest to you, just as Ms Chong did this morning, that 2 that is a Milwaukee battery banded cutter. It's not 3 a hydraulic cutter. 4 A. We describe it as a hydraulic disc cutter. 5 Q. You might. Nobody else does, Mr Poon. 6 Returning to this particular incident -- 7 A. (In English) Yes. 8 Q. -- it's almost, is it not, as if Leighton were trying to 9 make a point of showing you, Mr Poon, that they were 10 going to persist with the malpractice -- persist with 11 the malpractice -- notwithstanding your numerous 12 protests; that's right, isn't it? 13 A. Well, first of all, first this was just a record of what 14 I heard. It's neutral and I didn't make a comment, 15 I did not add my personal opinion, and maybe they are 16 correct. Maybe they feel that the threads were too 17 long. There are a lot of explanation. 18 Q. I suppose one explanation is that the cutting of the 19 threads could have been for a legitimate reason. Did 20 that ever occur to you? 21 A. From their perspective, maybe, but I'm just recalling 22 what they had said, and I did not make any description 23 or comment or have my opinion regarding what they said. 24 I did not make such comments. 25 Q. Just staying with this point, whyever they are doing it,</p>	<p>1 because they did not explain it to me. I just recorded 2 what they said. 3 CHAIRMAN: I appreciate that. Just one further question 4 arising from that. My understanding -- and I'll be 5 corrected if I'm wrong, and I may well be wrong -- is 6 that cutting of threads was not a permissible activity 7 on site. If you wanted to cut the threads, you had to 8 go back to the assembly yard which was under the 9 jurisdiction of BOSA. 10 A. You cannot cut it at all. 11 CHAIRMAN: All right. So that's even stronger. So the 12 point I'm making is you knew threads mustn't be cut at 13 all, or, if they were going to be cut, they should be 14 cut by BOSA back in the assembly yard, and yet they're 15 cutting threads in front of you. 16 A. Yes. 17 CHAIRMAN: Are you sure you saw threads being cut and maybe 18 it wasn't just reinforced bars being cut or trimmed or 19 something of that kind? 20 A. (In English) No. 21 (Via interpreter) They were cutting the threads. 22 They were cutting the threading sections. 23 CHAIRMAN: So it's quite audacious, isn't it, really? 24 A. Yes. 25 CHAIRMAN: Because you know it's not -- it's almost like --</p>
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<p>1 Leighton are persisting with the practice despite your 2 protests; that's correct, isn't it? 3 A. Then you have to ask Mr So or Mr Rodgers. 4 Q. No, I'm asking you. 5 A. I don't know. I don't know what the two of them were 6 thinking. 7 CHAIRMAN: I'm sorry, I do apologise for interrupting, 8 Mr Boulding, but we're talking about a senior officer 9 now -- 10 A. (In English) Yes. 11 CHAIRMAN: -- with another senior officer -- 12 A. (In English) Yes. 13 CHAIRMAN: -- both of whom, on the face of it, are 14 responsible, hard-working officers, and one is saying to 15 you, "What's the problem"; correct, effectively? 16 A. Yes. 17 CHAIRMAN: Did you think that perhaps you hadn't, as it was 18 put by Mr Boulding -- that maybe you hadn't got the full 19 picture and that maybe they did, and they knew that what 20 was happening was entirely permissible and entirely 21 proper in engineering terms? 22 A. Of course I had some of my doubts, some doubts. I was 23 thinking could they really be so confident that they 24 were totally correct? I had my doubts. But what 25 I said -- what I mean is I cannot answer on their behalf</p>	<p>1 analogies are always bad but I'm overly fond of using 2 them -- it's almost like seeing somebody committing 3 petty theft, and saying, "What's wrong? He's just 4 stealing a few of these or that", we all know it's wrong 5 an yet -- do you see the point I'm making? They must 6 have known it was wrong. 7 A. (In English) I see, yes, I think so. 8 CHAIRMAN: Why would they make an admission like that to 9 you, two of them? 10 A. Let me start again. One of them was silent. It was 11 just Mr So. Kyle Rodgers did not make any comment. 12 CHAIRMAN: I appreciate that, but they're standing there 13 together with you and we can all hear each other. 14 It's just highly unusual. You're not a corrupt man. 15 A. Mmm. 16 CHAIRMAN: If you were in on the game, so to speak, and it 17 was some sort of "mired in corruption" kind of 18 situation, it would be different, but you're not 19 corrupt. You're going along. 20 A. Mmm. 21 CHAIRMAN: Would you agree it's a very, very odd situation? 22 A. It's not strange for the two of them. It's not weird 23 for the two of them. I have a real example that can 24 explain the situation. 25 CHAIRMAN: Okay. I've given an analogy as opposed to</p>

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<p>1 an example. I'm satisfied with your answer.</p> <p>2 A. (Chinese spoken).</p> <p>3 CHAIRMAN: You're saying it's not so weird for the two of</p> <p>4 them --</p> <p>5 A. The analogy, if it really happened and if the police</p> <p>6 were informed, and it's real, then you would -- this is</p> <p>7 what you have conjectured. But it really happened and</p> <p>8 the police have been informed and there are records.</p> <p>9 CHAIRMAN: I appreciate that. I'm just saying: would you</p> <p>10 yourself agree? Sometimes I might walk into a room and</p> <p>11 see three people standing on their heads. That I would</p> <p>12 find to be strange, if it was, for example, a law</p> <p>13 office. But I would recognise the strangeness of it in</p> <p>14 those particular circumstances.</p> <p>15 All I'm saying to you is: would you agree that for</p> <p>16 two senior officers to watch something happening that</p> <p>17 shouldn't be happening, indeed was prohibited in that</p> <p>18 particular part of the site, and for them to say, "Don't</p> <p>19 worry, leave it be" to you was a strange thing?</p> <p>20 A. Well, it just expressed their arrogance. It expressed</p> <p>21 their arrogance on their part.</p> <p>22 CHAIRMAN: Okay. Thank you.</p> <p>23 A. I wanted to follow up on your example: it really</p> <p>24 happened.</p> <p>25 MR BOULDING: You have referred, Mr Poon, to your police</p>	<p>1 were cutting short threaded heads of rebars to stop</p> <p>2 cutting threaded heads of rebars. At that time, Mr So</p> <p>3 told those workers on the spot not to stop and also told</p> <p>4 those workers to ignore personnel of China</p> <p>5 Technology" --</p> <p>6 A. (In English) Yes.</p> <p>7 Q. -- "and besides, MTRCL knew about the incident of the</p> <p>8 threaded heads of rebars being cut."</p> <p>9 I'm going to pause there. You had certainly not</p> <p>10 told MTR about the rebar?</p> <p>11 A. (In English) I didn't. I didn't.</p> <p>12 Q. And you do not know whether or not any of your men had</p> <p>13 told MTR by this time, do you?</p> <p>14 A. (In English) I believe, I believe Mr Leung and Mr Chu</p> <p>15 had told and --</p> <p>16 Q. Well -- sorry, I stopped you. Did you want to say</p> <p>17 anything else?</p> <p>18 A. I said I think Mr Leung and Mr Chu had notified the MTR,</p> <p>19 and I don't think that my company did not notify MTR.</p> <p>20 Q. You have no evidence, have you, to show that MTR were</p> <p>21 notified about these threaded rebars --</p> <p>22 A. (Chinese spoken).</p> <p>23 Q. Mr Poon, if you don't interrupt me, I promise not to</p> <p>24 interrupt you. You've got no evidence, have you, to</p> <p>25 confirm or evidence the fact that your company had told</p>
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<p>1 statement, and perhaps we just ought to have a look at</p> <p>2 that. It's, in the English, D765.1.</p> <p>3 A. (In English) Yes.</p> <p>4 Q. I'm reading from paragraph 9, 765.3, and here we're</p> <p>5 talking about the incident that you've just been</p> <p>6 discussing with the learned Commissioner, are we not:</p> <p>7 "On a certain day between 15 September and" --</p> <p>8 A. Yes.</p> <p>9 Q. Thank you. Then I pick it up about a third of the way</p> <p>10 down:</p> <p>11 "After walking for about 45 minutes, we reached bay</p> <p>12 C1-4, I saw two Chinese men (about 30 to 40 years old,</p> <p>13 medium built, I recognised that they were staff</p> <p>14 responsible for carrying out welding process, other</p> <p>15 details could not be provided) wearing royal blue,</p> <p>16 orange and yellow coloured polo T-shirts as well as</p> <p>17 reflective vests bearing the logo of Leighton using</p> <p>18 hydraulic cutter to cut short the threaded heads of</p> <p>19 rebars in rebar bundles (with 10 or more rebars wrapped</p> <p>20 together in each bundle of rebars)."</p> <p>21 Now, we've already discussed the hydraulic cutter so</p> <p>22 I don't want to go there again, but I do read on:</p> <p>23 "I used English to tell Mr So and Mr Rodgers to</p> <p>24 watch those workers that were cutting short threaded</p> <p>25 heads of rebars. Afterwards I asked those workers that</p>	<p>1 MTR by this time that threaded rebars were being cut</p> <p>2 on site? You've got no evidence, have you?</p> <p>3 A. I think the MTR report B5 is evidence.</p> <p>4 Q. I'll come to that in due course, Mr Poon, but reading</p> <p>5 on:</p> <p>6 "Afterwards Mr So again told his company staff:</p> <p>7 'Continue cutting.' Mr Rodgers, who was also at the</p> <p>8 scene, did not make any response and on his own walked</p> <p>9 to a place 3 to 4 metres away. I used the Huawei mobile</p> <p>10 phone of my company to take 2 photos and to record</p> <p>11 a video clip of about 10 odd seconds of this incident."</p> <p>12 It's right, is it not, that the malpractice you</p> <p>13 refer to was being carried out on site by Leighton</p> <p>14 openly; they weren't seeking to hide it, were they?</p> <p>15 A. Why did I say that you took things out of context? As</p> <p>16 you read paragraph 9, you read most of it, but then</p> <p>17 deliberately skipped the sentence about 5 pm. Could you</p> <p>18 read that sentence as well?</p> <p>19 Q. "The three of us met at about 5 pm at the entrance of</p> <p>20 SAT in the site, and we walked slowly towards bay C1-4."</p> <p>21 A. 5 pm, we started walking at 5 pm, why? And what time</p> <p>22 are we talking about? Because about 5.15 workers would</p> <p>23 start packing up. So, from 5.30 onwards, there would</p> <p>24 usually be not many people on site, except those working</p> <p>25 at night.</p>

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<p>1 So that's why "openly" you -- "openly", you use that 2 term as if they were doing it openly. But it's because 3 they are already doing it towards the evening, that's 4 when there's change of shift. For the MTRC, that's the 5 time when they did it. 6 Q. Come, come, Mr Poon. It's 5 pm, I think you say, around 7 5 pm. 8 A. Yes. 9 Q. There are still plenty of people on site at that time, 10 aren't they? 11 A. No, no, no, no. 12 Q. And you'll know, won't you, that there was no change of 13 shift for the MTR inspectors who were carrying out 14 inspections on the site; that's right, isn't it? You're 15 agreeing with me? 16 A. What do you mean, no change of shift? Yes, there's 17 change of shift, at around 5 pm to between 7 pm there's 18 almost no one on site. That is from 5 pm or so until 19 7 pm or so, only the Chinat people were there working. 20 Q. I'm told that's simply not correct, Mr Poon, and at 5, 21 roughly between my 5 -- 22 A. (In English) Who told you? 23 Q. My client. And between 5 and 7 there were MTR 24 inspectors on site for the very purpose of inspecting 25 this sort of work, and you are suggesting to the learned</p>	<p>1 they told their workers, in your presence, to just get 2 on with this malpractice. Rodgers was so disinterested, 3 you tell us he walked away 3 or 4 metres. Your 4 protestations were having no effect, were they? They 5 were having no effect. 6 A. Okay, now, this incident happened at around 22 September 7 or the 15th -- between 15 and 22 September. I, Khyle 8 Rodgers and Gabriel So -- I complained to them in early 9 September, during a tea break at the shopping mall, the 10 food court of the shopping mall. At that time, they 11 told me they didn't know it was Leighton staff cutting 12 the bars. I wanted to exert more pressure, so I brought 13 them there, to show them, "It's your staff cutting the 14 bars." That's a fact. 15 CHAIRMAN: Sorry, could I just interrupt a second -- my 16 apologies, again. If you had now been -- or, rather, if 17 you had been the subject of very arrogant conduct by 18 senior Leighton people, which was manifestly incorrect 19 conduct by way of cutting of reinforcing bars -- 20 A. (In English) Yes. 21 CHAIRMAN: -- if you saw a number of those bars being put 22 against a coupler or screwed in very slightly into the 23 coupler, you actually had the evidence available to you, 24 right there and then, if you went along the next day or 25 even the day after to the MTR and said, "Look, I don't</p>
<p>Page 126</p> <p>1 Commissioner that Leightons were openly and blatantly 2 carrying out this malpractice in front of them. I'm 3 just suggesting it's not credible, what you're 4 suggesting, Mr Poon. 5 A. You're referring to -- you're using information of 6 MTRCL, that is your client, and then on that basis you 7 say what I said is incredible. But my answer to you is 8 that what your client told you, that is between 5 and 9 7 pm they would deliberately inspect the site, that's 10 not credible. 11 Q. Let me assume in your favour -- although I don't accept 12 it for a moment -- that you had seen a malpractice which 13 was going on clandestinely on site between 5 and 7, when 14 very few people were there, very few MTR people. 15 A. No one from MTRCL there at the time. 16 Q. We don't accept that for a moment, but assume that in 17 your favour. Can I suggest that that's even more -- 18 even more -- of a reason why you ought to have reported 19 this malpractice to the MTR. That must follow, mustn't 20 it? 21 A. At the time, I deliberately took Khyle Rodgers and 22 Gabriel So out to the site to see -- because I still 23 wanted to exert pressure on the senior management of 24 MTRCL to stop this or to improve on this. 25 Q. But, Mr Poon, you tell us, you told the police, that</p>	<p>Page 128</p> <p>1 want to cause any trouble here, but really this type of 2 conduct is not acceptable. Let me take you to gridline 3 26", or whatever it is, "and here we go. All you've got 4 to do is unscrew this and you will see there's no thread 5 there. All you've got to do is look at that and see 6 they haven't even bothered to connect it at all", and 7 that would have been, as the English say, the proof of 8 the pudding, would it not? There it is, for everybody 9 to look at. 10 A. It seems -- for this period, between mid-September to 11 22 September, the Commission seems not to be clear about 12 the atmosphere on site at the time. At the time, MTRC 13 knew all about it. MTRCL knew someone was cutting the 14 bars. MTRCL kept wanting to catch them. So it's true 15 that it's the MTRCL frontline inspector, they did try to 16 handle it. It's just that in that process I found that 17 there were some changes with Leighton trying to evade 18 the MTRCL. 19 Now, I couldn't recall exactly, honestly. I didn't 20 see it myself. Even Aidan asked me and I told Aidan 21 too -- Aidan Rooney, that is. 22 CHAIRMAN: I appreciate that hindsight is a perfect wisdom 23 and all of us look back and say, "I wish I had done 24 that", or, "I would have been better served by doing 25 something else." But on your evidence -- and I'm just</p>

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<p>1 trying to understand it sympathetically -- the MTRCL are 2 trying to catch people doing this? 3 A. Yes. They caught them, actually. 4 CHAIRMAN: So they're out on the hunt because they know this 5 type of conduct is not acceptable. You've now gone to 6 a couple of Leighton people and they have said to you 7 arrogantly, "Go away." 8 A. Yes. 9 CHAIRMAN: And you've now got the work in front of you, 10 because unless they came back in the dark of the night 11 and repaired it all, which they are unlikely to do 12 because their arrogance wouldn't allow them to do that, 13 all you've got to do is go to the MTRC and say, "You're 14 on the hunt for this type of thing. Let me tell you, 15 here, you can see it." 16 Now, I appreciate the benefit of hindsight, 17 a perfect wisdom, so all I'm saying is do you agree, at 18 that stage, having been thwarted on more than one 19 occasion, it would in fact have been a very simple 20 matter for you, to have put the matter completely beyond 21 doubt by going to the MTRC, who were, on your evidence, 22 on your side, at that moment in time? 23 A. Yes, but I didn't do that myself at the time. I did not 24 do that, that's true. 25 CHAIRMAN: And why is that?</p>	<p>1 at source. 2 CHAIRMAN: All right. 3 MR BOULDING: What I suggest to you, Mr Poon, is that you 4 didn't do that because it didn't occur. 5 A. You can refer to page B5 of the MTRCL's report. 6 Q. You keep wanting to take me there, so let's just have 7 a little look at that together -- 8 A. (Chinese spoken). 9 Q. -- because I understand that you contend that this 10 supports your contention that China Technology told MTR 11 of the cut rebar in August or September 2015. Is that 12 your contention? 13 A. My contention is that -- let me say it again -- MTRCL 14 has made it clear that someone told them there were 15 people cutting rebars. It's not possible for us to 16 match our testimony with MTRCL; right? 17 Q. But you're not suggesting, are you, as I thought you 18 were, that this June 2018 MTR report confirms that China 19 Technology told them about instances of cutting rebar 20 back in August or September 2015? You're not suggesting 21 that? 22 A. I believe my legal team, in examining Fang Sheung, 23 Leighton and MTR staff, that would become clear, because 24 there were just four parties on site. There are just 25 four parties on the whole site. At the station area,</p>
<p>Page 130</p> <p>1 A. I chose to speak to Malcolm again. 2 CHAIRMAN: Okay. But then Malcolm was a friend; is that 3 right? 4 A. Malcolm Plummer, he's the project director. 5 CHAIRMAN: Of ...? 6 A. (In English) Of Leightons. 7 CHAIRMAN: Of Leightons, okay, and you knew him. But you 8 had already been told, basically, to go away and mind 9 your own business by two senior Leightons people. All 10 I'm saying is all you had to do was go to MTR, who you 11 knew were on the hunt. They were there with their dogs 12 and their shotguns and all you had to do was go to them 13 and say, "I can show you", and that would have been 14 it -- 15 A. (Chinese spoken). 16 CHAIRMAN: -- the matter would have been proved, systems 17 would have been improved, safety measures would have 18 been assured, and those who were conducting an illicit 19 practice, whether because they wanted to save time, 20 whether it was sloth or whether it was corruption, they 21 would have been dealt with. 22 A. Yes, what you said is right, but I did not do that at 23 the time, as a matter of fact. So the way you put it, 24 it would be one of the best solutions, but I did not do 25 that. I still wanted to use my own means to stop things</p>	<p>Page 132</p> <p>1 there were just four parties: Fang Sheung, Chinat, MTRCL 2 and Leighton. If it's not Fang Sheung, if it's not 3 Leighton, if it's not MTRCL, then -- if it's not them 4 telling MTRCL, then it must be Chinat telling MTRCL. 5 Let's just look at the first and second paragraphs 6 and see what it says there. 7 Q. Please do not evade the question, Mr Poon. Are you 8 suggesting that this June 2018 MTR report confirms that 9 your company, China Technology, told MTR about incidents 10 of rebar cutting in August or September 2015? 11 A. On this page of the report, it stated clearly that the 12 frontline of the MTRCL admitted that between August and 13 December 2017, they were tipped off that someone was 14 cutting rebars. They did not state specifically Chinat. 15 This morning I said I didn't listen to the audio 16 recordings because attached there are audio recordings 17 but I never listened to them. 18 Q. So you're not suggesting that it confirms that in August 19 or September 2015, China Technology told MTR about the 20 incidents of rebar cutting? You're not suggesting that? 21 A. It's logical deduction. Then I think you could verify 22 that, with logical deduction. 23 Q. When did you tell them, Mr Poon? How did you tell them? 24 A. Who? Tell who? 25 Q. MTR.</p>

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1 A. I said my staff told MTRCL. This is clear. Please read
2 it out. Okay? Don't evade it.
3 Q. Let's have a look at B5. I'm going to read, I think,
4 the first paragraph:
5 "Based on the recollections of all the current and
6 ex-MTRCL staff members interviewed, none of them
7 actually witnessed the threaded sections of
8 reinforcement steel bars being cut. However, two
9 members of site staff recall either seeing themselves or
10 having reported to them evidence that such cutting had
11 taken place, such as a gap between a threaded steel bar
12 and a coupler connection or the cut ends of threaded
13 steel bars."
14 So you can see what's said there. Absolutely no
15 reference to that reporting having been made by China
16 Technology, is there; correct?
17 A. Wait, wait a moment. Mr Boulding usually reads very
18 slowly. How come all of a sudden you read so fast?
19 I can't keep up. Let's read line 5.
20 Q. Line 5 of what?
21 A. Since there's no reference to Chinat, let me read this
22 out, whole paragraph again:
23 "(In English) Based on the recollections of all the
24 current and ex-MTRCL staff members interviewed ..."
25 Q. Yes. So?

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1 A. "(In English) ... none of them actually witnessed the
2 threaded sections of the reinforcement steel bars being
3 cut. However, two members of site staff recall either
4 seeing themselves or having reported to them evidence
5 that such cutting had taken place ..."
6 (Via interpreter) Is that clear enough, clearer than
7 your version?
8 Q. I think we both read the same thing, did we not,
9 Mr Poon?
10 A. I was slower.
11 Q. I will put the question to you again. There is
12 absolutely no reference in there, is there, to MTR
13 having been told by China Technology about the incidents
14 of rebar cutting; correct?
15 A. Yes, there's no reference to Chinat, but in this --
16 Q. Thank you.
17 A. But, you know, they did mention that MTRCL never saw
18 someone cutting the threaded bars, so that means they
19 knew nothing about it, but then, later on, they said two
20 of their staff members said either they saw it
21 themselves or someone had tipped them off that someone
22 was cutting bars.
23 So let me say this again: this could be verified and
24 I'm sure the Commission will look into that. There are
25 just four parties on site.

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1 Q. I'm sure they will. Just reading on:
2 "One member of site staff recalls that, on five
3 occasions between August 2015 and December 2015, he
4 either saw or had reported to him that the threaded
5 section of reinforcement steel bars had been cut.
6 Following what he believes to be the third of these
7 occasions in December 2015 (which he recalls was
8 originally reported to him by the second member of site
9 staff referred to below and subsequently observed by him
10 in an inspection), the issue was raised to Leighton by
11 email, with a request to 'strengthen their quality
12 checks and keep a high level of quality control'. As
13 a result of this email, Leighton issued a ...
14 non-conformance report to Fang Sheung, which was
15 actioned and closed out."
16 And of course, in due course, the MTR witnesses who
17 saw those likely five occurrences are coming to explain
18 to the learned Commissioner and the good professor the
19 circumstances in which they saw those incidents and the
20 fact that they were remedied.
21 But let me read on, Mr Poon, because I don't want
22 you to think I'm being selective at all.
23 A. Can I say this, please, can I just add: they mentioned
24 specifically it was between August and December, so they
25 knew in August, so that's therefore another direction

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1 for the Commission to investigate into, that is MTRCL
2 already knew and then in their quality supervision plan
3 MTRCL should be there to witness people screwing bars
4 for half of the time at least. Then it was in August
5 that they already knew but four months later the matter
6 remained unresolved.
7 Q. I didn't ask you a question, Mr Poon, but we got
8 a little speech from you. You wanted to look at this
9 document, and I'm reading from the third paragraph:
10 "The second member of site staff recalls that, on
11 two occasions over the same time period, he saw evidence
12 that the threaded section of reinforcement steel bars
13 had been cut. His memory is that, on the first of these
14 occasions, he took a photograph of the cut threaded end
15 of a steel bar in his hand. Having seen a copy of the
16 email to Leighton referred to above (which had a number
17 of photos attached to it), he believes that this
18 photograph is one of those which was attached to the
19 email."
20 Again, it's an obvious point, is it not, Mr Poon,
21 but there's absolutely no reference here to MTR having
22 those occasions drawn to its attention by China
23 Technology; correct?
24 A. Well, it referred to five occasions here, and the third
25 paragraph is that on two occasions these were included

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<p>1 in a document, and I can tell you exactly which document 2 it is. It is the NCR issued to Fang Sheung, 157. For 3 these three other occasions -- and that is those 4 occurring from August to December 2015 -- they hadn't 5 said anything about who reported these three incidents. 6 NCR157 is in Leighton paper C20 and after that. 7 Q. I'll put my question again, Mr Poon. There's absolutely 8 no statement here, is there, that China Technology told 9 MTR about all or any of these incidents of rebar cutting 10 in August or September 2015; that's correct, isn't it? 11 CHAIRMAN: Mr Poon, it's simple enough. I think you just 12 have to have some faith in listening to a question and 13 answering it. Not every question is there to harm you. 14 The questions are there essentially to clarify -- 15 A. (In English) No, I'm listening to the Chinese 16 translation. 17 CHAIRMAN: All right. Because it seems to me obvious that 18 there's nothing said there that it was you or your 19 company as identified that made the reports. 20 A. (In English) Agree. 21 CHAIRMAN: But somebody made the reports, perhaps, because 22 there's an either/or situation there. 23 A. (In English) Yes. 24 MR BOULDING: That's right. 25 CHAIRMAN: So the question then arises as to who that</p>	<p>1 But just for the record -- 2 A. (In English) Yes. 3 Q. -- the MTR witnesses will come along in due course, and 4 Kobe Wong will say that there were likely five incidents 5 in the period August 2015 through to December 2015, and 6 that he personally knew of four of them because of the 7 inspection process, and that one incident was reported 8 to him by the other member of the site staff, the second 9 member of the site staff referred to here, one Andy 10 Wong. 11 So, having put that on the transcript for posterity, 12 there's another point that I'd like to pick up with you 13 following our discussion on this particular matter. The 14 transcript records that you told the learned 15 Commissioner, about 10 or 15 minutes ago, that in 16 addition to raising the matter with Mr So and 17 Mr Rodgers, you also raised the matter with Malcolm of 18 Leighton at this time. Do you remember giving that 19 evidence? 20 A. (In English) Yes. 21 Q. And do I assume that by "Malcolm", you are referring to 22 Mr Malcolm Plummer? 23 A. (In English) Yes. 24 Q. It's not an allegation that affects me directly but it 25 is right, is it not, that one looks in vain in your</p>
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<p>1 somebody may be, if at all. 2 MR BOULDING: That is absolutely right, sir. 3 CHAIRMAN: All I'm saying -- sorry, Mr Boulding -- the same 4 of these questions are to try to assist the tribunal, 5 and so not every question is there in order to 6 eviscerate you. Do you understand what I mean? 7 A. (In English) I know. I am just trying to assist the 8 Commission to investigate and find the truth. 9 CHAIRMAN: Would you like to have the break? Shall we have 10 15 minutes? 11 MR BOULDING: Okay. 12 CHAIRMAN: And we may, gentleman, continue a little bit 13 later than 5.00 this evening, to see if we can reach 14 a point of opportune moment when we can say, "Fine, we 15 can finish for the weekend." Thank you. 16 (3.40 pm) 17 (A short adjournment) 18 (3.56 pm) 19 MR BOULDING: Good afternoon again, Mr Poon. 20 A. (In English) Good afternoon. 21 Q. We had been talking about the June 2018 MTR report and 22 in particular the first three paragraphs on page B5, and 23 you finally paid me the courtesy of answering my 24 question about whether there was a reference to China 25 Technology telling MTR, so we can move on from that.</p>	<p>1 witness statements and indeed your police witness 2 statements for any reference to the fact that you told 3 Malcolm Plummer of Leighton about the rebar cutting 4 incidents at this time? There's nothing in your witness 5 statements about that, is there? 6 A. That's correct, there is no reference. 7 Q. Again, whilst it's perhaps not for me to take up the 8 cudgel, can I suggest that had you had such 9 a conversation with Mr Plummer at this time, it's the 10 sort of thing that you ought to have put in your witness 11 statement, isn't it, if it really occurred? 12 A. Well, I did not include Malcolm Plummer's discussions 13 into the witness statement. 14 Q. Just so far as this incident is concerned -- and the 15 learned Commissioner has already asked you questions 16 about this -- you did not take any steps at all, did 17 you, apart from saying that you took two photographs and 18 the ten-odd second video; correct? 19 A. Correct. 20 Q. And so far as the photo and video are concerned, you are 21 no longer in a position to produce those for the 22 Commissioner's benefit, are you? 23 A. Correct. I haven't found the material yet. 24 Q. Well, I think you tell us, do you not, that Karl Speed 25 of Leightons required you to delete this evidence on</p>

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1 18 September 2017?

2 A. Yes.

3 Q. And again, when Mr Shieh questioned you yesterday, you

4 were kind enough to tell him, weren't you, that this was

5 a fact that you had not referred to in your Commission

6 witness statements or your police statements?

7 A. (In English) Yes.

8 Q. Just like my learned friend Mr Shieh, I've got to

9 suggest that you that the reason you cannot produce

10 these two photos and the short video is that they never,

11 ever existed, did they; you never took them?

12 A. No, that's not the case. Actually, I heard the

13 Independent Commissions -- every night I go check out

14 the photos. I hope to retrieve this material.

15 Q. Well, no doubt if it's retrieved in due course, we'll

16 see your counsel putting it to the appropriate MTR and

17 Leighton witnesses.

18 Now, I'd like to move on to the third occurrence.

19 You tell the Commission about this in paragraph 41 of

20 your witness statement. That's page D21.

21 A. Yes.

22 Q. You say:

23 "On 22 September 2015, I, again, saw staff of

24 Leighton cutting the threaded rebars with hydraulic disc

25 cutter. I (secretly) used my personal Huawei mobile

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1 phone to take 7 photographs. Amongst those

2 7 photographs, 2 of which were random photographs I took

3 in order not to alert the staff of Leighton."

4 Then you refer to the photographs.

5 Now, you say there that this was another occurrence,

6 so it had occurred, what, some five/six/seven days after

7 the second occurrence that you had witnessed with Mr So

8 and Mr Rodgers; correct?

9 A. (In English) Yes.

10 Q. You see, I'm just a bit puzzled, because you've told us

11 what happened on that particular occasion, that So told

12 you, "What is the problem with cutting rebar?", and told

13 his staff to ignore you; Rodgers apparently shrugs his

14 shoulders and walks away 3 or 4 metres. Why would the

15 staff of Leighton have been bothered if you were taking

16 photographs of them doing something that they had been

17 told to do by their bosses on site? Why do they care?

18 A. Well, maybe you're not aware of the rules in Hong Kong

19 construction sites. They are not as cultured and

20 civilised as you are.

21 Q. I haven't heard that compliment for a while, Mr Poon.

22 CHAIRMAN: Yes, Mr Poon.

23 MR BOULDING: I'll put the question again, Mr Poon. They

24 wouldn't have been bothered. They had been told by

25 their bosses, "Get on and do it. What's wrong with it?"

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1 And you had witnessed that. Why were you concerned

2 about alerting them?

3 A. Actually, if you take pictures of people in the

4 construction site, you'll get your phone thrashed.

5 Q. Oh, well.

6 CHAIRMAN: Sorry, "you get thrown" or "phone"?

7 INTERPRETER: "You'll get your phone bashed or thrashed."

8 CHAIRMAN: I see, if you are taking photographs with it,

9 yes.

10 MR BOULDING: In any event, in this instance you tell us

11 that you didn't report the incident to anybody; correct?

12 A. Yes.

13 Q. And all you did was upload the photos and the videos to

14 cloud back in the office; correct?

15 A. (In English) Yes.

16 Q. And again I've got to suggest to you -- and it may well

17 be I get the same answers in return -- that in

18 circumstances where you'd seen three malpractices in the

19 space of two or three weeks, it's obvious to you that

20 you simply ought to have reported them to the MTR,

21 shouldn't you?

22 A. Well, because I had been asked in a very indirect way by

23 the senior management of MTRCL.

24 Q. But you knew it was a malpractice. You regarded it as

25 being something that shouldn't be going on. If

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1 Leightons weren't prepared to do anything about it, you

2 ought to have gone to MTR and reported it to them,

3 shouldn't you?

4 A. Within the same month, September, Aidan Rooney had asked

5 me a few times. I had told him the truth.

6 Q. We're coming to that, and Mr Rooney does not accept that

7 for a moment. But even assuming in your favour that

8 you'd mentioned it to Mr Rooney -- and we don't accept

9 that for a moment, but even assuming in your favour that

10 you had -- it would be right to say, wouldn't it, that

11 the rebar cutting incidents continued, didn't they?

12 A. After telling Aidan Rooney, I had noticed that the acts

13 were still continuing.

14 Q. And as I've said, we don't accept that you told Rooney,

15 but assuming in your favour that you did, when he did

16 nothing about it, why didn't you go to government and

17 say, "Look, Government, look Highways Department, look

18 Buildings Department, do you know what's going on on

19 this site? There's malpractice, everyone's condoning

20 it, and it's got safety implications." If it was really

21 going on, that's what you ought to have done, shouldn't

22 you, Mr Poon?

23 A. You are correct, but ultimately I took that action but

24 not at that moment.

25 Q. Well, I think you took about another 18 months/two years

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<p>1 to get to that, didn't you, before you got hold of Frank 2 Chan? 3 A. (In English) Two years. 4 Q. Two years, during which time, according to you, the 5 incidents went on; correct? 6 A. Yes. 7 (In English) Until middle ... 8 (Via interpreter) Until June 2016. 9 Q. During which time you were covering up all of this 10 malpractice, all of these cut rebars, rebars not being 11 fixed into couplers properly. Throughout that time, you 12 were covering it up with your concrete, weren't you? 13 A. (In English) No. 14 Q. No? So, what, you didn't put the concrete over these 15 instances of rebar, cut rebar? 16 A. Well, I had believed at one time that even Mr Aidan 17 Rooney was aware, and the situation could not have 18 continued. But I had heard continuously from my 19 colleagues that they were reporting, and that's why 20 I had escalated the issue. 21 Q. Well, you've got my point. I suggest that you ought to 22 have told government at this time, and your evidence is 23 on the transcript. 24 You also deal with your third incident in your 25 police statement, do you not? I think we can pick that</p>	<p>1 version of the police statement does indeed refer to 2 each time cutting short either one rebar or a bundle of 3 ten or more rebars wrapped together; that's what's 4 stated in the Chinese version, is it not? 5 A. Yes, and I also amended that. 6 Q. You amended it. I've got to suggest to you, Mr Poon, 7 that it is inconceivable that you made a mistake of that 8 nature in a police statement, and that your amendment 9 today represents something you wish you'd said as 10 opposed to something you actually said. That's correct, 11 isn't it? 12 A. This is not what I wanted to say? 13 Q. Well -- 14 A. (In English) Okay. 15 (Via interpreter) You're saying that at the time, 16 what I said in the Inquiry is not what I said to the 17 police at the time? No. 18 Q. What you said to the police at the time is that 19 "They" -- "they" being the Chinese gentlemen -- "used 20 hydraulic cutter to cut short threaded heads of rebars, 21 each time cutting short either one rebar or a bundle of 22 10 or more rebars wrapped together". That's what you 23 told the police, didn't you? 24 A. From my perspective, if I really said that, it's 25 equivalent to a university student saying one plus one</p>
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<p>1 up at -- English, anyway -- 765.4. 2 A. Yes. 3 (In English) Yes. 4 Q. Thank you. I believe it's paragraph 10. 5 A. (In English) Yes. 6 Q. You have been questioned by Ms Chong on this particular 7 matter already, but there are one or two things that I'd 8 like to discuss with you, if I may. 9 You tell us that you inspected at 4 pm on 10 22 September 2015, and: 11 "At ... 6.17 pm ... I again saw two Chinese men 12 (about 30 to 40 years old, medium built, I believe they 13 were staff responsible for carrying out welding process, 14 other details could not be provided) wearing royal blue, 15 orange and yellow coloured polo T-shirts as well as 16 reflective vests bearing the logo of Leighton using 17 hydraulic cutter to cut short the threaded heads of 18 rebars in bay C1-4 and bay C1-5 of the construction 19 site. They used hydraulic cutter to cut short threaded 20 heads of rebars, each time cutting short either one 21 rebar or a bundle of 10 or more rebars wrapped 22 together." 23 Now, you sought to correct that particular element 24 of your statement when you were cross-examined by 25 Ms Chong, but it's right, is it not, that the Chinese</p>	<p>1 equals ten. 2 Q. I don't know why you say -- 3 A. What I mean is I'm an experienced engineer/project 4 manager professional, and if I could make mistakes, it's 5 like a university student saying one plus one equals 6 ten. 7 Q. Well, you're not suggesting for a moment, are you, that 8 the Hong Kong Police put something in your statement 9 that you didn't say; is that what you're suggesting? 10 A. The police did not make things up. It's just that the 11 police made a record and when they typed it up into the 12 computer they might have misconstrued or distorted what 13 I meant, because I did mention that there were bundles 14 and I forget which part that was mentioned and 15 questioned that -- I never said that. 16 Q. You're making this up, aren't you, Mr Poon? 17 A. No. 18 Q. You will have had the opportunity, won't you, Mr Poon, 19 to have read this statement in Chinese before you signed 20 it; that's correct, isn't it? 21 A. Correct. 22 Q. And you told me earlier today that you were not 23 a careless man, and you emphasised the fact that you had 24 a 1st class degree. Do you remember saying that? 25 A. Yes, but I didn't get 100 per cent in all my grades.</p>

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<p>1 I did have mistakes in my exam papers.</p> <p>2 Q. So what's your point?</p> <p>3 A. That means, if there are some errors, especially in</p> <p>4 these kind of areas where you have to examine under</p> <p>5 a microscope, at that time I was not aware.</p> <p>6 Q. Mr Poon, come, come, come.</p> <p>7 A. (In English) Come, come, come.</p> <p>8 Q. You might not have got 100 per cent, but whatever else</p> <p>9 I think you are, you are not a complete fool, and if you</p> <p>10 hadn't agreed with this particular sentence, "They used</p> <p>11 hydraulic cutter to cut short threaded heads of rebars,</p> <p>12 each time cutting short either one rebar or a bundle of</p> <p>13 10 or more rebars wrapped together" -- if you hadn't</p> <p>14 agreed that you had said that, you would not have signed</p> <p>15 the statement, would you?</p> <p>16 A. I had said I saw them cutting them in a bundle. What</p> <p>17 I meant was they are not individual bars, they were</p> <p>18 cutting them in bundles. That means the bars are</p> <p>19 wrapped in bundles.</p> <p>20 Q. If that's what you told the police, why didn't they</p> <p>21 accurately write down what you'd said?</p> <p>22 CHAIRMAN: It's difficult for him to answer that. It</p> <p>23 depends on the intelligence and the experience of the</p> <p>24 police officer, which would be speculation on his part.</p> <p>25 MR BOULDING: Well, we've got the point, Mr Poon, about you</p>	<p>1 ends on the floor, and the presence of a milky white bag</p> <p>2 for collection of the cut ends -- none of those matters</p> <p>3 are referred to in your Commission witness statements,</p> <p>4 are they, Mr Poon?</p> <p>5 A. Correct.</p> <p>6 Q. What I suggest to you is that all of those matters are</p> <p>7 material facts, are they not? They're important facts?</p> <p>8 A. Yes.</p> <p>9 Q. And you tell us that you took seven photographs of the</p> <p>10 particular event.</p> <p>11 A. Yes.</p> <p>12 Q. My recollection is that you told Mr Shieh yesterday that</p> <p>13 you thought that the photographs had probably been</p> <p>14 recovered, even though you deleted them, or that you</p> <p>15 missed deleting them. Do you remember giving Mr Shieh</p> <p>16 that answer?</p> <p>17 A. Yes. Yes.</p> <p>18 Q. You also said I think today to Ms Chong that you</p> <p>19 reviewed the photographs before you went to the police;</p> <p>20 do you remember saying that?</p> <p>21 A. Yes.</p> <p>22 Q. I wonder if we could have a look at the photographs.</p> <p>23 Unfortunately, I think I'm using a different numbering</p> <p>24 system from Ms Chong, but if we could look at them,</p> <p>25 starting at D766.</p>
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<p>1 having the opportunity to have a look at this statement,</p> <p>2 and we will make submissions on that in due course.</p> <p>3 But you tell us that you attempted to stop the</p> <p>4 cutting; correct?</p> <p>5 A. Yes, correct.</p> <p>6 Q. You also tell us that there were 20 to 30 cut threaded</p> <p>7 ends on the floor; correct?</p> <p>8 A. Correct.</p> <p>9 Q. And that there was a milky white bag for the collection</p> <p>10 of those cut ends; right?</p> <p>11 If you look just to the end of the paragraph:</p> <p>12 "I saw there were about 20" --</p> <p>13 A. Yes, yes, in an off-white bag.</p> <p>14 Q. Yes. Just to see what you say:</p> <p>15 "I saw that there were about 20 to 30 threaded heads</p> <p>16 that had been cut on the ground, and those workers</p> <p>17 cleared up the said threaded heads that had been cut by</p> <p>18 placing them in a milky white bag. I left on my own</p> <p>19 after 2 minutes."</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. It's right, is it not, that none of the matters that</p> <p>23 I have just discussed with you -- the mode of rebar</p> <p>24 cutting, your attempts to stop the cutting, the</p> <p>25 reference to the fact that there were 20 or 30 threaded</p>	<p>1 A. Yes.</p> <p>2 Q. They go from D766, 767, 768, 769, 770, 771 and 772, then</p> <p>3 we've got 774 and 775 -- they are the photos you are</p> <p>4 referring to, are they not, Mr Poon?</p> <p>5 A. Yes.</p> <p>6 Q. If we look at photograph D768, this is a photograph --</p> <p>7 A. (In English) Yes.</p> <p>8 Q. -- that you say you took, what, on 22 September 2015?</p> <p>9 I think it was dated when Ms Chong took you to it;</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. And there we can see, can we not, that an operative has</p> <p>13 a cutting device in his hands; correct?</p> <p>14 A. Yes.</p> <p>15 Q. And whilst Ms Chong has raised this point with you</p> <p>16 before, I've got to suggest to you that it is not indeed</p> <p>17 any sort of hydraulic cutter but is in fact a Milwaukee</p> <p>18 battery electronic band cutter; that's correct, isn't</p> <p>19 it?</p> <p>20 A. We have different descriptions of the name. I agree</p> <p>21 with what you say, as I agreed with Prof Hansford</p> <p>22 earlier.</p> <p>23 Q. Just for the avoidance of doubt, what I am suggesting to</p> <p>24 you is that it is not in any sense of the word</p> <p>25 a hydraulic cutter; that's correct, isn't it?</p>

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1 A. I have some reservation. I have some reservation,
2 a little bit. I have a little bit of reservation.
3 Q. Well, to the extent that you have even a little bit of
4 reservation, Mr Poon, I've got to suggest you're
5 mistaken. And of course, in any event, we saw earlier
6 today, during the course of our discussions, did we not,
7 that you told the learned Commissioner that the new
8 cutting machine, which you confirmed was the hydraulic
9 cutting machine, was purchased after September 2015; do
10 you remember giving that evidence?
11 A. Yes, I remember that.
12 Q. If we look through these photographs, we certainly do
13 not see, do we, any worker cutting more than ten
14 threaded rebars at once? There's no picture of that?
15 A. I agree.
16 Q. In fact, I think I'm right in saying that the only
17 picture of cutting, the pictures of cutting, are on
18 D767, 766 perhaps, and 768; correct?
19 A. Correct.
20 Q. And if I'm right, we can see, can we not, that it's all
21 the same incident, because we can see the piece of wood
22 that Prof Hansford referred to earlier, during the
23 course of your evidence; do you see that?
24 A. Yes, it's the same incident.
25 Q. Right. Again, we look in vain, do we not, for any bits

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1 of cut rebar lying on the floor, let alone 20 to 30
2 bits. Can you show me any bits of rebar lying on the
3 floor?
4 A. Well, on the floor, there are about 7 to 11 layers of
5 bars. So after the threads were cut, they would fall
6 between the layers of bars, in the gap.
7 Q. That's what occurred to me as well. Just looking at
8 these bars, we can see that they are all pretty close
9 together, can we not?
10 A. How close?
11 Q. Well, pretty close together.
12 A. Well, it's about 150 millimetres close from --
13 Q. Okay.
14 A. And then for the cut threads, it's about 30 to
15 40 millimetres in length.
16 Q. Okay.
17 A. So it's very easy for them to fall through.
18 Q. Easy for them to fall through, and I would suggest that
19 having fallen through, and assuming that there were
20 20 or 30 threaded ends lying on the floor, how did you
21 manage to count them in the space of two minutes through
22 all of that rebar, Mr Poon?
23 A. You can test me and see if I could guess it right.
24 Q. I think your word, not mine, Mr Poon, "guess". You
25 couldn't possibly count them through that amount of

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1 rebar, could you?
2 A. From the first day I came in this room, you asked me --
3 it's like when you asked me how wide this room is. It's
4 the same. Because I'm in construction for some
5 20 years, I'm a lot more discerning than you are.
6 Q. Mr Poon, I know it's late in the day, but please don't
7 evade the question again.
8 What I'm suggesting to you is just look at these
9 photographs. You tell us you were there for a couple of
10 minutes. We can't even see any cut ends of rebar, let
11 alone being able to count 20 or 30. What I'm suggesting
12 to you is that that's a figment of your imagination.
13 You can't have counted 20 or 30, can you?
14 A. If you look straight down, then you could see it
15 clearly. It can't be shown on the photo, because the
16 photo, you take it from the side.
17 Q. You say looking straight down, but you also tell us in
18 your witness statement that the Chinese man expressed
19 his resentment to taking photos of him --
20 A. Yes.
21 Q. -- so it wouldn't appear to me that you were
22 a particularly welcome guest as far as this occurrence
23 was concerned? Are you agreeing with me?
24 A. I don't agree.
25 Q. You're not agreeing?

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1 A. (In English) Not agree.
2 (Via interpreter) If you look at the photo D767,
3 it's all blurred all of a sudden and you know why.
4 Q. Really? Well, anyway, you can't show me any of the cut
5 ends in the photographs, and what I suggest to you is
6 that it wouldn't have been possible for you to have
7 counted 20 to 30 cut ends of rebar between ten layers of
8 reinforcement in the space of a couple of minutes.
9 That's simply not possible, is it, Mr Poon?
10 A. I'm not saying within two minutes I saw them cut 20-plus
11 cut bars. No. Definitely not. I'm just saying that in
12 the two minutes I saw about 20-plus cut ends there, and
13 you can't see them on the photo. That's why in the
14 witness statement I deleted all things that could not be
15 seen in the photos.
16 Q. Similarly, if we look in the photos, we do see a bag,
17 but we certainly don't see a milky bag, do we? I think
18 if you look at photo D772, we've got a lime green bag
19 there, have we not?
20 A. No, not that one. Not that one. Yes, the photo
21 couldn't show that, and it's not D772.
22 Q. It's D772 in the bundle I'm referring to, which I think
23 will be your D232.
24 A. (In English) I got D772.
25 Q. D772 shows, does it not, a green bag and not the milky

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1 white bag that you'd have the learned Commissioner
2 believe was there?
3 A. I am not referring to this green bag. I'm saying, you
4 know, a jute bag, a recycled bag on the floor. It's not
5 the one hung up here, no.
6 Q. I can see that.
7 A. This is the one probably for workers to keep their
8 clothes.
9 Q. No, no. What I've got to suggest to you, Mr Poon, is
10 that what you're describing here is simply not supported
11 by your photographs at all, is it? What you're
12 describing in your witness statement is not supported at
13 all by your photos, is it?
14 A. In my witness statement, I did not mention any jute bag.
15 I did not mention 20 cut ends, no. It was in the police
16 statement only. I think you've mixed things up,
17 Mr Boulding.
18 Q. No, I haven't mixed things up. I haven't mixed things
19 up at all. I've already taken you to your police
20 statement, and you've agreed with me that matters
21 referred to therein, which are important, are not in
22 your Commission witness statement. And in your police
23 witness statement you say:
24 "I saw that there were about 20 to 30 threaded heads
25 that had been cut on the ground, and those workers

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1 cleared up the said threaded heads that had been cut by
2 placing them in a milky white bag."
3 That's your police statement at D765.4. And, as
4 with so many other aspects of your evidence, I've got to
5 suggest that the photos which you rely upon to support
6 those contentions do not support them at all, do they?
7 A. Let me say this again. What you said -- you said in
8 a witness statement I said there's a milky white bag and
9 there are 20 to 30-odd ends, and then you mentioned the
10 police statement. You mentioned police statement;
11 that's how you describe it. If I heard you right, that
12 is you said in the witness statement I mentioned there
13 are 20 or 30 cut ends or there's an off-white bag, and
14 then I tell you in the witness statement I did not write
15 that down. The police statement and the witness
16 statement are two separate documents, from my point of
17 view.
18 Q. And, like so many of your documents, Mr Poon, they're
19 inconsistent, aren't they?
20 A. Not the same, not inconsistent. In the police
21 statement, there's more.
22 Q. Anyway, you go on to tell us that you observed cutting
23 in the period after August 2015; correct?
24 A. Correct.
25 Q. Then I think we pick this up in paragraph 90 of your

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1 first witness statement. It's on D37.
2 A. Yes.
3 Q. There, you say to the learned Commissioner:
4 "I told the representatives of MTRC that I observed
5 the cutting from late July 2015 until June 2016."
6 Do you see that?
7 A. Yes.
8 Q. But it's not correct, is it, that you observed the
9 cutting until June 2016; that's correct, isn't it?
10 A. You mean -- are you again focusing on the word
11 "observe", that is I saw it for myself? "Observe", that
12 means I observed such incidents from July 2015 to June
13 2016, it's been happening in that time. I think it's
14 a question between the English and the Chinese version,
15 it's not that I personally witnessed it but I observed
16 there had been such incidents for that period.
17 Q. Mr Poon, you are seeking to depart from the wording of
18 your statement which you told the Commission three or
19 four days ago was true. Your words:
20 "... I observed the cutting from late July 2015
21 until June 2016."
22 You did not observe the cutting until June 2016, did
23 you?
24 A. Yes, I did observe that until that period.
25 Q. Well, let's have a look at the transcript for Day 7,

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1 please. If you could be kind enough to go to page 133.
2 This is Mr Pennicott asking you questions.
3 A. (In English) Yes.
4 Q. Line 22:
5 "You don't give any evidence to the Commission, Mr
6 Poon, that you personally saw any rebar being cut after
7 September 2015; is that right?
8 Answer: I would like to say that it's after
9 December 2015, after December 2015, Thomas Ngai still
10 told me there were people doing this.
11 Question: My question, Mr Poon, was that you
12 personally did not see any further cutting of rebar
13 after September 2015; is that right?
14 Answer: Correct.
15 Question: So what we have, so far as your personal
16 knowledge is concerned, Mr Poon, is a situation that I
17 can summarise in this way, to see if you agree with me:
18 you limit your evidence of seeing this cutting to really
19 the period end of July to September 2015 -- I'm talking
20 about you personally, Mr Poon.
21 Answer: Or you can narrow it further down to
22 mid-August.
23 Question: All right. I'm happy with that.
24 Mid-August to 22 September, just that period; yes?
25 Answer: Yes.

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<p>1 Question: All of that confined to the EWL slab? 2 Answer: Yes. 3 Question: And all confined to area C1? 4 Answer: C1 and C2." 5 So it's an obvious point, Mr Poon, but yet another 6 mistake, I suggest, on your part. You cannot -- as you 7 said here, you cannot have observed the cutting from 8 late July 2015 until June 2016, can you? 9 A. The gentleman next to you, he is a Hong Kong person. 10 Well, when we use the word "observe", it doesn't mean 11 that we have to personally witness it. We can still use 12 the term "observe". And Mr Ian Pennicott asked 13 an obvious question, personally witnessing it. So these 14 are two different concepts. 15 Q. Mr Poon, the Chinese gentleman next to me is shaking his 16 head. He does not agree with what you say at all, 17 Mr Poon. 18 A. Well, that's not what I think. 19 Q. I'm not interested in what you think. I'm interested in 20 what you said. And this is another instance, Mr Poon, 21 where you've been caught out with something that's wrong 22 in your statement and, when you're caught out, you try 23 to play on words to excuse yourself. That's the 24 situation, isn't it? 25 A. You are wrong. Well, if I am in the wrong, I would</p>	<p>1 Q. You told Mr Pennicott again that you didn't see any 2 further cutting of rebars after September 2015. That's 3 the transcript reference we've just gone to. Correct? 4 A. (In English) Not correct. I'm saying that I'm not 5 personally witness, personally witness. 6 Q. We've got the point on that, Mr Poon. I don't think we 7 need to labour that. 8 It's right, is it not, that you did not say anything 9 to anybody about rebar cutting which is alleged to have 10 occurred in the period late 2015 to July 2016; that's 11 correct, isn't it? 12 A. (In English) No. No. 13 Q. No? 14 A. I have said I have told Malcolm Plummer, as I previously 15 explained. 16 Q. Yes. Can you point me to where you deal with that in 17 any of your witness statements, Mr Poon? 18 A. As I said, not long ago, half an hour ago, I did not put 19 Malcolm Plummer into the witness statement at all. 20 Q. How convenient, Mr Poon. Even though, I suggest, it 21 would have been a very important matter to draw to the 22 learned Commissioner's attention, would it not? That 23 you, the whistleblower, had told Mr Malcolm Plummer 24 about this serious malpractice, this malpractice which 25 could have safety considerations in that period; that's</p>
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<p>1 admit it, honestly, and I'm not like you. In my witness 2 statement, in paragraph 90, I don't see any mistake on 3 my part. I was responding to the fact that MTRC saying 4 that cutting of rebar didn't happen after December. 5 Then I said no, that's not the case; that lasted until 6 June 2016. Well, that's the word I used, "observe". 7 Q. Anyway, you tell us what you claim to have seen or heard 8 up to September 2015. If we go to paragraph 42 of your 9 witness statement, this is page D22, you say: 10 "In September 2015, Mr Thomas Ngai told me that he 11 still saw staff members of Leighton cutting the threaded 12 rebars and/or pretending they had properly installed the 13 threads into the couplers." 14 You corrected that to "December" -- 15 A. (In English) Yes. 16 Q. -- when you were asked by Mr Pennicott, and you also 17 told Mr Pennicott that you couldn't remember clearly the 18 circumstances that you were told about this incident by 19 Mr Ngai. Do you remember giving that evidence? 20 A. (In English) Yes. Yes. 21 Q. Then in paragraph 43 you tell us -- this is D22: 22 "From June 2016 onwards, I no longer heard from 23 anyone that the threaded rebars were being cut by 24 anyone." 25 A. (In English) Yes.</p>	<p>1 a very important matter, isn't it? 2 A. It depends on how you look at it. We would just want to 3 show or prove there has been bar cutting. This is 4 a fact. This is a solid fact. This is so very true. 5 To me, my witness statement contains what is needed. If 6 I put every conversation that I had with somebody else, 7 then it would last 1,000 paragraphs. Maybe for 8 examining myself I would take up, say, the 20 or 30 days 9 of hearing that is scheduled by the Commission. 10 Q. Mr Poon, nobody would have complained about you telling 11 the truth, the whole truth, in this particular 12 Commission of Inquiry, had it taken 1,000 pages. No one 13 would have complained. You weren't limited in terms of 14 size, were you? You could have made a statement in your 15 witness statement -- and you've prepared five of them, 16 five of them for the Commission, I think another five 17 for the police -- and you could have slipped in, in 18 a sentence or two, "Of course I also told Mr Malcolm 19 Plummer. I told him about it." You could have done 20 that, couldn't you? 21 A. Well, you have made some wrong remark. I have prepared 22 six police statements. Again, you are wrong. Does it 23 mean that we should discredit what you said? 24 CHAIRMAN: That's not the question. 25 A. You are trying to play around with words so I'm doing</p>

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<p>1 the same to you too.</p> <p>2 CHAIRMAN: All right. Would you agree that it would not</p> <p>3 have been a matter of great difficulty for you to have</p> <p>4 put in the fact that you had confided in Mr Plummer?</p> <p>5 A. Well, we had conversations -- not just with Malcolm</p> <p>6 Plummer but I have talked to a number of other Leighton</p> <p>7 staff as well. In the email we saw the names of other</p> <p>8 Leighton staff; I didn't put those in either. What</p> <p>9 we --</p> <p>10 CHAIRMAN: Sorry, you spoke to them about the fact that you</p> <p>11 had witnessed rebar cutting and you had been unable to</p> <p>12 have anything done about it?</p> <p>13 A. A lot of different messages that I shared with them.</p> <p>14 I talked about my suspicions, et cetera. Take as</p> <p>15 an example --</p> <p>16 CHAIRMAN: Talking about your suspicions is one matter.</p> <p>17 Reporting the fact that you had been rebuffed by two</p> <p>18 senior officers of Leightons of course is another.</p> <p>19 Mr Poon, what you must accept is neither</p> <p>20 Prof Hansford nor myself are completely devoid of</p> <p>21 experience or of humanity. We fully understand that</p> <p>22 what you're trying to remember back over a good number</p> <p>23 of years, you won't necessarily remember everything and</p> <p>24 reduce it all to writing as if you are a robot. All</p> <p>25 right? But there are certain things that you may be</p>	<p>1 that not everybody remembers every single thing, even</p> <p>2 when they are spending a good deal of time with their</p> <p>3 lawyers and police officers. But you have to just</p> <p>4 answer frankly and fully and leave it up to us to do the</p> <p>5 weighing. All right?</p> <p>6 A. (In English) Okay.</p> <p>7 CHAIRMAN: You understand me?</p> <p>8 A. (In English) Understand.</p> <p>9 CHAIRMAN: Good.</p> <p>10 MR BOULDING: Mr Poon, going back to the incidents of rebar</p> <p>11 cutting -- you've told the Commission that you saw four</p> <p>12 for instances; correct?</p> <p>13 A. Yes.</p> <p>14 Q. And as we've seen, you told Mr Pennicott that you</p> <p>15 personally did not see any further incidence of cutting</p> <p>16 of rebar after September 2015; correct?</p> <p>17 A. (In English) Yes.</p> <p>18 Q. Right. Now, so far as any alleged incidence of rebar</p> <p>19 cutting which occurred after September 2015,</p> <p>20 I understand that you are relying upon what you were</p> <p>21 told by your employees; correct?</p> <p>22 A. (In English) Yes.</p> <p>23 Q. Now, let's see what they say. Of course, they've been</p> <p>24 cross-examined, and much of their evidence has been</p> <p>25 challenged, as indeed your evidence has been challenged,</p>
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<p>1 questioned about as to why you didn't remember, because</p> <p>2 they are important matters and legitimate questions can</p> <p>3 then be raised.</p> <p>4 Now, it's for us to weigh it all up afterwards, in</p> <p>5 the balance, to see whether we can be persuaded in any</p> <p>6 particular area by your evidence. So the fact that you</p> <p>7 forget things once in a while is not of itself</p> <p>8 definitive, but it doesn't help us if with every</p> <p>9 question comes an argument. Do you see the point?</p> <p>10 A. It's not I rebut every question, have an argument with</p> <p>11 every question. No, that's not the case.</p> <p>12 CHAIRMAN: That's a riposte already, to use a fencing term.</p> <p>13 Anyway, I'm just trying to say: a simple question,</p> <p>14 a simple answer.</p> <p>15 A. Well, is this a criminal court, trying to find whether</p> <p>16 Chinat is guilty or not? No, that's not the case. What</p> <p>17 we try to do, as to whether this bar cutting did happen,</p> <p>18 and to what extent.</p> <p>19 CHAIRMAN: Thank you very much for telling me that. That</p> <p>20 helps me. But what I had said to you earlier is that we</p> <p>21 need to see whether we can be persuaded in any</p> <p>22 particular area by your evidence. What we're looking at</p> <p>23 is your overall evidence, and we are looking to very</p> <p>24 serious matters, and we want to see whether we can be</p> <p>25 persuaded by it. We are people of the world. We accept</p>	<p>1 but let's see what they say.</p> <p>2 First of all, Mr Chu Ka Kam. He deals with this</p> <p>3 matter in his English statement, starting at D970. He</p> <p>4 tells us that he saw two occurrences of threaded rebars</p> <p>5 being cut. Are you aware of that or do you want to go</p> <p>6 to the particular paragraphs?</p> <p>7 A. (In English) I don't aware.</p> <p>8 Q. You're not aware. I don't want you to somehow say that</p> <p>9 I am putting you at a disadvantage. Let's have a look,</p> <p>10 certainly in the English version, at D973.</p> <p>11 A. (In English) Yes.</p> <p>12 Q. Here we've got paragraph 11:</p> <p>13 "On a day in or about late October 2015 at around</p> <p>14 noon, I saw two workers at or about area C wearing dark</p> <p>15 orange uniforms and reflective safety vests, similar to</p> <p>16 those worn by Leighton employees, cutting threaded</p> <p>17 rebars."</p> <p>18 A. Mmm.</p> <p>19 Q. So that's one occurrence.</p> <p>20 A. Mm-hmm.</p> <p>21 Q. Then if we go on to paragraphs 18 and 19; that's English</p> <p>22 D975:</p> <p>23 "18. In the evening of about mid-June 2016, I saw</p> <p>24 two workers at or about area A wearing dark orange</p> <p>25 uniforms and reflective safety vests, similar to those</p>

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<p>1 worn by Leighton employees cutting threaded rebars." 2 Okay? 3 A. (In English) Yes. 4 Q. So that's two. 5 A. (In English) That's only two. 6 Q. And no doubt if I've missed anything, your counsel will 7 pick that up in their re-examination. 8 Now let's have a look at Mr Ngai. He has produced 9 a witness statement, and that witness statement goes -- 10 English version 960, and if you would be kind enough to 11 turn to page 962, D962, do you see the heading, 12 "Witnessing the cutting of threaded rebars"? 13 A. (In English) Yes. 14 Q. Then 9: 15 "On a day in December 2015 at or about 1900 hours, 16 I was at area C of the Hung Hom Station construction 17 site and saw two male workers (I forgot what uniforms 18 they were wearing at that time) using a grinder/cutter 19 to cut the threaded rebar." 20 Do you see that? 21 A. (In English) Yes, yes. 22 Q. So certainly he is not saying anything there, is he, 23 about a hydraulic cutter; correct? 24 A. (In English) Yes. 25 Q. Then just to pick up what he says in 11:</p>	<p>1 in the lower deck (ie NSL slab) of area HKC. 2 On one day (which I could not recollect the exact 3 date of such), I saw five to six workers in uniform 4 (although I could not recall which company it was) 5 cutting threaded rebars at the conjunction of area HKC 6 and area A." 7 Okay? 8 A. (In English) Yes. 9 Q. So that's two instances for Mr Li, is it not? 10 A. (In English) Okay. 11 Q. Then if we look at Mr But, and Mr But's English witness 12 statement starts at D915. 13 A. (In English) Yes. 14 Q. If you would be kind enough to go to paragraph 24. 15 A. Mmm. 16 Q. "In or about early February 2016, I saw on two separate 17 days that workers wearing Leighton uniforms were holding 18 a cutting/grinding machine to cut the threaded rebars." 19 So just pausing there, again it appears, does it 20 not, that the so-called hydraulic machine is not being 21 used; correct? 22 A. Mmm. 23 Q. And: 24 "The cutting/grinding machine was the same as the 25 one that I had observed the workers using in September</p>
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<p>1 "This is the only occasion which I witness the 2 cutting of threaded rebars." 3 Correct? 4 A. (In English) Yes. 5 Q. So that's one for him? 6 A. Mmm. 7 Q. Now let's have a look at what Mr Li says. Mr Li, the 8 English version starts at D922. If you would be kind 9 enough to go to paragraph 10. 10 A. (In English) Yes. 11 Q. You can see, can you not, that this is under the 12 heading, "Incidents in area B"; do you see that? 13 A. (In English) Yes. 14 Q. "10. At that night after Mr Poon mentioned the matter 15 at the lunch meeting, I saw five to six workers without 16 upper clothing cutting the threaded rebars in area B." 17 A. (In English) Yes, I remember this one. I remember this 18 one. 19 Q. Good. But you didn't see it yourself, obviously; it's 20 something you were told? 21 A. (In English) No, no. 22 Q. So that's one incident. Then I think if we go to 23 paragraph 15, "C2. Incidents in area HKC". 24 A. Mmm. 25 Q. "In or about late January 2016, I was assigned to work</p>	<p>1 2015: see paragraph 9 ... The workers cut threaded 2 rebars 2 to 3 times on [those days]." 3 Then I think we ought to have picked up paragraph 9 4 as well, where he refers to an incident in paragraph 9; 5 do you see that? 6 A. (In English) Yes. 7 Q. He refers to those and we've been there before, in 8 paragraph 11; we discussed that earlier today. Do you 9 see that? 10 A. (In English) Yes. 11 Q. Then if we go to paragraph 27 on 915: 12 "In or about mid-April 2016, I was transferred to 13 area A, HKC, and area B to supervise workers of Chinat. 14 In or about mid-April 2016, I once saw that there 15 were about 30 threaded rebars placed in HKC with only 16 about 2 centimetres of threaded rebars remaining on each 17 of them. The following day I went to work, those 18 threaded bars I saw the day before were not to be seen 19 again." 20 So that's the limit, is it not, of the evidence from 21 China Technology concerning cut rebars? 22 A. (In English) So altogether eight times, is it? 23 Q. You're a better mathematician than I am, I'm sure, but 24 I'll go for eight, and of course there's four from you; 25 correct? You saw four yourself?</p>

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<p>1 A. (In English) Yes. 2 Q. So eight plus four, I think that's 12? 3 A. (In English) Yes. 4 Q. As I've suggested to you before, of course you -- "you" 5 being China Technology -- poured concrete over all of 6 those incidents; that's right, isn't it? 7 A. (In English) Yes. 8 Q. Now, in circumstances where you got there before I did 9 and said that there were 12 occurrences -- 10 A. Mm-hmm. 11 Q. -- and of course that's the period, what, from April 12 2015 right through into 2016; correct? 13 A. (In English) Yes. 14 Q. What I suggest to you is that your approximation which 15 you gave to the learned Chairman the other day, that 16 there are 1,000 or approximately 5 per cent of the 17 rebars and the couplers where this malpractice went 18 on -- 19 A. (In English) Yes. 20 Q. -- is grossly exaggerated. Grossly exaggerated. 21 A. I disagree. 22 MR BOULDING: Sir, I know you said that we might sit for 23 a little bit longer this evening. I'm about to go on to 24 another subject. My learned friend Mr Pennicott told me 25 he needs to raise a couple of matters. I'm in your</p>	<p>1 that to your good judgment. 2 MR WILKEN: You will recall this afternoon that Mr Boulding 3 was kind enough to say on a couple of occasions he was 4 taking up the cudgels for someone else. 5 CHAIRMAN: Of course. Thank you. 6 MR WILKEN: I would therefore at present adopt that, and 7 obviously I do have to say for the transcript so that 8 everyone knows where Leighton stands on this particular 9 point. 10 CHAIRMAN: Good. Thank you very much. 11 MR PENNICOTT: Sir, I did have two points but now I have 12 three points. My initial reaction to the point that 13 Mr Wilken has raised is this, that certainly the 14 Commission's legal team has been trying to keep 15 a careful note of anything that appears to us to be 16 "new", in inverted commas -- 17 CHAIRMAN: Yes. 18 MR PENNICOTT: -- with a view either for me to give 19 a witness that will be coming later in time the 20 opportunity of dealing with that new matter, or 21 I daresay, if for example -- it may be that Mr Plummer 22 is a prime example -- Mr Wilken would like to put 23 anything in-chief to Mr Plummer, then of course I don't 24 think there's going to be any resistance to that course 25 of action.</p>
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<p>1 hands as to how long you would like to go on for. 2 CHAIRMAN: No, if you tell me it is an opportune moment -- 3 MR BOULDING: It is for me. 4 CHAIRMAN: -- I'm quite happy. 5 MR WILKEN: Sir, before Mr Pennicott rises, it may help if 6 I raise one point. 7 CHAIRMAN: Yes. 8 MR WILKEN: Obviously the Commission have heard a number of 9 new allegations against Leighton this afternoon. 10 CHAIRMAN: Yes. 11 MR WILKEN: I do not wish to cross-examine on those matters, 12 otherwise we will be here forever. On the other hand, 13 sir, I'm aware that this is an inquisitorial proceeding 14 and I do not wish to be called unfair if at a later date 15 I make the submission, which we will make, that this 16 witness lacks any credibility whatsoever, that Leighton 17 has not put these new allegations to him. 18 Sir, I'm in your hands and Mr Pennicott's hands as 19 to how we proceed but as I said it is no inclination on 20 my part to keep cross-examining forever. 21 CHAIRMAN: No. Thank you very much. I will canvass that 22 matter with Mr Pennicott. 23 There may be a certain matter which common sense 24 blares out you need to ask some questions on, but 25 I don't recall such a matter at the moment. I'll leave</p>	<p>1 But I think perhaps we can reflect on it in the 2 light of what Mr Wilken has said. 3 CHAIRMAN: Yes, thank you. 4 MR PENNICOTT: That's the first point. 5 Sir, the second point is a rather mundane point but 6 at some point next week, I guess, we are going to reach 7 the Fang Sheung witnesses, and I put everybody on notice 8 that we will be looking at quite a lot of the 9 Fang Sheung drawings and sketches. They are desperately 10 difficult to read on the screen, other than for the very 11 useful purpose of magnifying certain details and 12 magnifying certain calculations. And so, if my learned 13 friends think it appropriate, then they might want to 14 bring with them the hard copies, if they have, of 15 bundles E1 through to E6. So that's just a word of 16 warning. 17 Sir, the third matter, which is rather more 18 important. Sir, I think you're aware of this. Two of 19 Leighton's witnesses, Mr Malcolm Plummer, as it happens, 20 and Mr Khyle Rodgers, will be giving evidence by 21 videolink from Australia. As a consequence of that, we 22 have had to have specific times when that is going to 23 happen. The current plan, as I understand it, is that 24 Mr Plummer is lined up to give evidence on Thursday, 25 8 November, at 10 o'clock in the morning.</p>

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<p>1 So, wherever we've reached on Wednesday night, I'm</p> <p>2 afraid we will have to take, as it were, time out, for</p> <p>3 Mr Plummer then to give his evidence, hopefully not any</p> <p>4 longer the whole of Thursday. I would have hoped we can</p> <p>5 certainly accomplish it in a shorter period of time.</p> <p>6 CHAIRMAN: If necessary, I will have to do some rationing of</p> <p>7 time.</p> <p>8 MR PENNICOTT: Yes, sir, indeed.</p> <p>9 CHAIRMAN: But I don't see why we can't finish in one day,</p> <p>10 otherwise the logistics really become difficult.</p> <p>11 MR PENNICOTT: Indeed, sir. So that's Mr Plummer. He will</p> <p>12 be on 8 November, so that everybody has got notice of</p> <p>13 that -- and of course my learned friend Mr Wilken for</p> <p>14 Leighton is aware of all these arrangements -- and he</p> <p>15 will be giving evidence from Perth.</p> <p>16 Sir, on Friday 9 November, Mr Khyle Rodgers will</p> <p>17 then be giving evidence over the videolink from Sydney,</p> <p>18 and again that will happen at 10 o'clock in the morning</p> <p>19 on Friday, 9 November.</p> <p>20 I thought it appropriate to give everybody notice of</p> <p>21 that so that everybody can be prepared. If it means</p> <p>22 that Mr Plummer and Mr Rodgers are, as it were, taken</p> <p>23 out of order so far as the provisional timetable is</p> <p>24 concerned, so be it. But that is what's happening so</p> <p>25 far as Mr Plummer and Mr Rodgers are concerned, just to</p>	<p>1 INDEX</p> <p>2 PAGE</p> <p>3 MR POON CHUK HUNG, JASON (on former oath in Punt) ...1</p> <p>4 Questioning by THE COMMISSIONERS1</p> <p>5 Cross-examination by MS CHONG2</p> <p>6 Cross-examination by MR BOULDING57</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 assist everybody with their preparation, so they know</p> <p>2 that is what is going to happen.</p> <p>3 Thank you, sir.</p> <p>4 CHAIRMAN: Good. Thank you very much.</p> <p>5 Is there anything further?</p> <p>6 MR PENNICOTT: No.</p> <p>7 CHAIRMAN: We will adjourn then, Mr Poon, until Monday</p> <p>8 morning at 10 am. You are in the middle of your</p> <p>9 evidence, still, so you are not entitled to discuss that</p> <p>10 evidence with any third party.</p> <p>11 WITNESS: (In English) Yes.</p> <p>12 CHAIRMAN: Any third party. All right?</p> <p>13 WITNESS: (In English) Okay.</p> <p>14 CHAIRMAN: Good. Thank you very much.</p> <p>15 (5.07 pm)</p> <p>16 (The hearing adjourned until 10.00 am</p> <p>17 on Monday, 5 November 2018)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	