

Page 1	Page 3
<p>1 Friday, 9 November 2018 2 (10.07 am) 3 MR WILKEN: Good morning, Chairman. Good morning, 4 Professor. I would like to call Mr Rodgers, if I may. 5 CHAIRMAN: Certainly. 6 MR WILKEN: Good afternoon, Mr Rodgers; can you hear me? 7 WITNESS: Good afternoon. 8 MR KHYLE ANTHONY RODGERS (sworn) 9 Examination-in-chief by MR WILKEN 10 MR WILKEN: I know you did it in the oath, but for your 11 record can you just give your full name to the 12 Commission again, please? 13 A. It's Khyle Anthony Rodgers. 14 Q. And you have given three statements to this Commission. 15 Can I take you to them, please? 16 A. Yes. 17 Q. The first one is in C27, page 20685. Can you see that? 18 Can you see that? 19 A. I can just see the first page. 20 Q. Yes. That is the first page of your witness statement. 21 If you can then go to 20690, is that your signature? 22 A. That is correct, yes. 23 Q. And this statement is dated 2 October 2018; correct? 24 A. Correct. 25 Q. If we could then go to C32/24096. Is that the first</p>	<p>1 Q. My name is Ian Pennicott, I am one of the counsel for 2 the Commission, and I've got some questions for you. 3 When I've finished, counsel for some of the other 4 parties may also have some questions for you as well, 5 and when we've all finished, if Mr Wilken thinks it's 6 necessary or appropriate, he will ask you any further 7 questions that he wishes to do. 8 During the course of the various questioning by me 9 and the other counsel, the Chairman and the Commissioner 10 may also ask you questions as well. So let's make 11 a start. 12 Mr Rodgers, as I understand it, your supervisory 13 role on this project covered the entirety of the EWL and 14 the NSL slabs; is that right? 15 A. That is correct, yes. 16 Q. Am I right in thinking that the sign-in/sign-out process 17 that Leightons had for their sub-contractors and for 18 their general labourers did not apply to supervisors 19 such as yourself? 20 A. No, because we generally went through a different gate. 21 It would register if you swiped your card but not 22 necessarily. 23 Q. Right. So there was no formal process for signing in 24 and signing out so far as you personally were concerned? 25 A. That is correct.</p>
Page 2	Page 4
<p>1 page of your second witness statement? 2 A. Yes, it is. 3 Q. If we go to 24102, is that your signature? 4 A. It is, yes. 5 Q. This statement is dated 18 October 2018? 6 A. Correct. 7 Q. If we then go to C34/25789, that's the first page of 8 your third witness statement? 9 A. Yes. 10 Q. Then if we go to 25790, is that your signature? 11 A. Yes, it is. 12 Q. And it is dated the 23rd day of October 2018? 13 A. Correct. 14 Q. Can you confirm that the contents of those statements 15 are true and accurate, as far as you're concerned? 16 A. Yes, they are. 17 Q. And that is the evidence which you wish to give to this 18 Commission? 19 A. Yes, it is. 20 MR WILKEN: Thank you. If you wait there, I believe 21 Mr Pennicott will have some questions for you. 22 Examination by MR PENNICOTT 23 MR PENNICOTT: Good morning, Mr Rodgers. Can you confirm 24 that you can hear me? 25 A. Yes, I can hear you.</p>	<p>1 Q. Now, you say, in paragraph 18 of your first witness 2 statement, if you could look at that, please: 3 "China Technology was run by Jason Poon. In the 4 early stages of the project, I would have contact with 5 Poon around once or twice per week." 6 Mr Rodgers, how do you define the "early stages", 7 please? 8 A. When they were kicking off, basically. It was probably 9 pre Jason having a superintendent on the site, the very 10 early stages, when he was mobilising. Hazard a guess, 11 maybe the first month of his contact on site. 12 Q. We know that Mr Thomas Ngai became Mr Poon's 13 superintendent or China Technology's superintendent, and 14 indeed you refer to Mr Ngai in your second witness 15 statement? 16 A. Yes, correct. 17 Q. Mr Ngai has told us that he joined as China Technology's 18 superintendent at the beginning of October 2015, so your 19 contact with Mr Poon probably would have been more 20 frequent up to that point; would you agree with that? 21 A. Only on some things. Depending on what other people he 22 may have had before October, we may have made contact 23 with, but I'm pretty sure our daily meetings started 24 before October, so depending on who was there in the 25 very early stages. But when Thomas did come along, it</p>

Page 5	Page 7
<p>1 was always Thomas I dealt with.</p> <p>2 Q. Okay. Could I then refer you, please, to paragraph 21</p> <p>3 of your first witness statement, where you say, about</p> <p>4 halfway down, "However, at no point" -- do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. It says:</p> <p>7 "However, at no point did he [Jason Poon] ever say</p> <p>8 to me that there were issues with defective rebars. He</p> <p>9 never said that the threaded ends of rebars had been cut</p> <p>10 off. It never came up in one of our daily meetings ...</p> <p>11 and none of my site team, the Leighton engineers or</p> <p>12 MTRCL staff ever reported that Poon or any China</p> <p>13 Technology staff had raised the issue."</p> <p>14 Now, I appreciate, Mr Rodgers, that you expand upon</p> <p>15 that in paragraphs 9 to 12 of your second witness</p> <p>16 statement, but we don't need to look at it, but can</p> <p>17 I just put this to you, that on one view, Mr Poon has</p> <p>18 slightly expanded the evidence that he has given about</p> <p>19 at least one of the meetings he says he had with you.</p> <p>20 What he says is this, that he had a meeting with you and</p> <p>21 Gabriel So in September 2015, at some point prior to</p> <p>22 15 September, at 3 o'clock in the afternoon at the Food</p> <p>23 Forum in level M of the Hung Hom Station, where he</p> <p>24 discussed the cutting of rebar with you.</p> <p>25 Would you like to comment on that contention,</p>	<p>1 three occasions from around September to December 2015</p> <p>2 and had them rectified immediately."</p> <p>3 When you say "I know now", when did you first know,</p> <p>4 Mr Rodgers, about those three occasions?</p> <p>5 A. About June, or -- earlier this year, only this year.</p> <p>6 Q. So June 2018?</p> <p>7 A. Pretty much.</p> <p>8 Q. And how did you come to know about them at that time?</p> <p>9 A. It was come through from -- I think it was the MTR</p> <p>10 witness or statement or something like that.</p> <p>11 Q. Okay. Presumably, Mr Rodgers, you would accept that the</p> <p>12 cutting of threaded rebar is a serious matter?</p> <p>13 A. Yes, it is.</p> <p>14 Q. And it happened, according to Mr Mok, and I think we now</p> <p>15 know Mr Cheung agrees with him, on three occasions. It</p> <p>16 involved, it appears, at least seven to eight rebars.</p> <p>17 It happened at the EWL slab, and the EWL slab, as you</p> <p>18 said a moment ago, is essentially on your watch.</p> <p>19 Is it not slightly surprising, Mr Rodgers, that you</p> <p>20 weren't made aware of these three incidents at the time</p> <p>21 they occurred?</p> <p>22 A. No, not necessarily. If it was raised and put to bed</p> <p>23 without much problem or fanfare, then yeah, I wouldn't</p> <p>24 necessarily know about it, if the rectification --</p> <p>25 usually come across with my work is if there was</p>
Page 6	Page 8
<p>1 Mr Rodgers?</p> <p>2 A. I have never been to the level M food court in Hung Hom</p> <p>3 Station with Gabriel So, let alone with Jason Poon.</p> <p>4 Q. Okay.</p> <p>5 Secondly, Mr Poon says that somewhere between 15 and</p> <p>6 20 September, he, you and Gabriel So had a site walk</p> <p>7 where you saw some rebar cutting taking place, and that</p> <p>8 he, Jason Poon, tried to stop the people that were doing</p> <p>9 the cutting. Do you recall that?</p> <p>10 A. No, I do not.</p> <p>11 Q. He also says that Gabriel So instructed the workers</p> <p>12 doing the cutting to continue to do so. Do you recall</p> <p>13 that?</p> <p>14 A. No, because I wasn't there. I don't recall being with</p> <p>15 Poon and Gabriel So.</p> <p>16 Q. Okay. Thank you very much.</p> <p>17 Could I then ask you, please, to look at</p> <p>18 paragraph 25 of your first witness statement. You say</p> <p>19 there:</p> <p>20 "While I was working on the project, I was never</p> <p>21 aware of any threaded ends of rebars being cut off."</p> <p>22 A. That is correct.</p> <p>23 Q. You then say:</p> <p>24 "I know now that one of Leighton's engineers, Edward</p> <p>25 Mok, identified rebars with the threaded ends cut off on</p>	<p>1 something that was a major, that maybe held up progress,</p> <p>2 sticking to programme, I suppose, or was a major safety</p> <p>3 issue, then it'll get raised, but if it was something</p> <p>4 that was raised and actually rectified pretty much</p> <p>5 straightaway, then yes, not necessarily.</p> <p>6 Q. The third occasion that Mr Mok identifies gave rise to</p> <p>7 the issue of a non-conformance report, non-conformance</p> <p>8 report no. 157. Did you have any knowledge at all of</p> <p>9 that non-conformance report having been issued?</p> <p>10 A. No, none that I remember.</p> <p>11 Q. Have you ever seen non-conformance report no. 157?</p> <p>12 A. Not that I remember, no.</p> <p>13 Q. All right. Could I move on, then, to paragraph 26 of</p> <p>14 your first witness statement, where you say:</p> <p>15 "I understand that Jason Poon made allegations about</p> <p>16 my knowledge of these issues in an email that he sent to</p> <p>17 Anthony Zervaas on 7 January 2017. I have been told</p> <p>18 that he said that I was 'well aware' and was 'directing</p> <p>19 the activity' of cutting the threaded ends of rebars.</p> <p>20 That statement or any statement to that effect, is</p> <p>21 categorically and completely false. It is simply</p> <p>22 a barefaced lie. I reject it entirely."</p> <p>23 Mr Rodgers, the email you mention in the first</p> <p>24 sentence of paragraph 26, have you ever seen that email?</p> <p>25 A. No, I don't think so, no.</p>

Page 9	Page 11
<p>1 Q. Can I show it to you, please?</p> <p>2 A. Yes.</p> <p>3 Q. It will be found at C12/7940.</p> <p>4 So, Mr Rodgers, are you telling us that this is the</p> <p>5 first time you've seen this email?</p> <p>6 A. Yes.</p> <p>7 Q. So what the first sentence says is this:</p> <p>8 "We had investigated internally and it is quite</p> <p>9 clear that your site in-charge Khyle Roger was well</p> <p>10 aware and directing these activities."</p> <p>11 So this is the first time that you've ever seen this</p> <p>12 email; is that right?</p> <p>13 A. That is correct, yes.</p> <p>14 Q. So it was not shown to you by either Mr Zervaas, Mr Tam</p> <p>15 or Mr Manning -- I think all three Leighton people --</p> <p>16 back in January 2017?</p> <p>17 A. No, it wasn't.</p> <p>18 CHAIRMAN: When did you finish on the project?</p> <p>19 A. On the Hung Hom Station?</p> <p>20 CHAIRMAN: Yes.</p> <p>21 A. I think it was about -- it was after Chinese New Year</p> <p>22 that year, so around March, I think, I went to another</p> <p>23 project.</p> <p>24 MR PENNICOTT: Mr Rodgers, perhaps it's my error. I should</p> <p>25 have asked you a question right at the outset, because</p>	<p>1 Were you aware that following this email, following</p> <p>2 receipt of this email, Mr Stephen Lumb, a Leightons</p> <p>3 senior engineer, carried out an internal review of the</p> <p>4 issue of cutting threaded rebar? Were you aware of</p> <p>5 that?</p> <p>6 A. No, I was not.</p> <p>7 Q. Could I ask you, please, to be shown Mr Lumb's review</p> <p>8 report, which is at C27/20242. That's the front sheet</p> <p>9 of Mr Lumb's review report, Mr Rodgers.</p> <p>10 COMMISSIONER HANSFORD: Can we scroll down to the date,</p> <p>11 please?</p> <p>12 MR PENNICOTT: Yes.</p> <p>13 COMMISSIONER HANSFORD: Thank you.</p> <p>14 MR PENNICOTT: You'll see that the first issue was</p> <p>15 17 January 2017, and the second issue, revision 1, was</p> <p>16 10 February 2017; do you see that?</p> <p>17 A. Yes, I do.</p> <p>18 Q. I think I know the answer to this question but I'll ask</p> <p>19 you anyway: have you ever seen this report before?</p> <p>20 A. No, I have not.</p> <p>21 Q. Could I just please ask you to be shown paragraph 1.2 of</p> <p>22 the report, at 20245. What Mr Lumb says there, in the</p> <p>23 last sentence, is:</p> <p>24 "The investigation was carried out on site between</p> <p>25 9 and 11 January" -- and that should clearly say "2017",</p>
Page 10	Page 12
<p>1 in the first line of your first witness statement --</p> <p>2 could you go to that, please, at 20685 -- you will see</p> <p>3 you say:</p> <p>4 "I was, from 1 June 2015 until 15 April ..."</p> <p>5 Should that say 2017, Mr Rodgers?</p> <p>6 A. No, that's 15 April 2018.</p> <p>7 Q. 2018? All right.</p> <p>8 A. Yes. I worked for Leighton Contractors, so whether it</p> <p>9 was at the Hung Hom Station or the new project over at</p> <p>10 PCB, the passenger clearance building.</p> <p>11 Q. Okay. Sorry, let's just get this clear. On this</p> <p>12 particular project, the SCL1112 Hung Hom Station, you</p> <p>13 were still there, as I understand it, in January 2017;</p> <p>14 is that right?</p> <p>15 A. Yes. That is correct, yes.</p> <p>16 Q. And you moved to a different project, Leightons project,</p> <p>17 in Hong Kong, sometime after Chinese New Year in 2017;</p> <p>18 is that right?</p> <p>19 A. Yeah. That is correct, yes.</p> <p>20 Q. Then you continued on that project until April 2018,</p> <p>21 when presumably you went a back to Australia?</p> <p>22 A. That is correct, yes.</p> <p>23 Q. Okay. So back to where we were. Thank you for that.</p> <p>24 You weren't shown the email back in January 2017 by</p> <p>25 either Mr Zervaas, Mr Tam or Mr Manning.</p>	<p>1 not "2013" -- "and involved" --</p> <p>2 COMMISSIONER HANSFORD: "2103", it says.</p> <p>3 MR PENNICOTT: 2103, indeed. It should say "2017".</p> <p>4 "... and involved an inspection of available site</p> <p>5 records, and interviews with key members of the</p> <p>6 construction team."</p> <p>7 Before I ask you the question, if you go to 20250,</p> <p>8 please, at the top, Mr Lumb says in the first line:</p> <p>9 "Having interviewed various members of the</p> <p>10 construction and supervision teams ...", and so forth,</p> <p>11 and so on.</p> <p>12 Then 20253, please:</p> <p>13 "The organisation structure", you can see there</p> <p>14 after the bullet points, "for the construction is</p> <p>15 attached in appendix I."</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. If we go to 20354, we see -- if you go right across to</p> <p>19 the right-hand side, please -- I think, Mr Rodgers, your</p> <p>20 name appearing under the box that says "HUH structure</p> <p>21 day shift"; do you see that?</p> <p>22 A. That's correct, yes.</p> <p>23 Q. With that lead-up, is it the case, therefore,</p> <p>24 Mr Rodgers, from what you've told us so far, that</p> <p>25 Mr Lumb did not interview you for the purposes of</p>

Page 13	Page 15
<p>1 putting this review report together? 2 A. Yes, that is correct. 3 Q. So the one person that Mr Poon mentioned in his email 4 was not interviewed for the purposes of this report. 5 That seems to be the conclusion, Mr Rodgers. Is that 6 right? 7 A. That is correct. 8 Q. I'll have some questions for Mr Lumb in due course about 9 that. That's Mr Lumb. 10 Did you ever have any conversation at all with 11 Mr Zervaas at any time about this email? 12 A. No, I did not. 13 Q. All right. 14 CHAIRMAN: Sorry, could I just ask -- I'm sure you'll 15 understand it's a bit puzzling, at face value, because 16 what we have is evidence of an email saying that you 17 knew all about this and actually played a part in it, 18 and then a report is done, and you're not interviewed 19 for that report, nor are you made aware of what could be 20 a fairly serious allegation against you. That's your 21 memory, is it? 22 A. Sorry? 23 CHAIRMAN: That's your memory? You don't have any 24 recollection of anybody discussing this with you? 25 A. No.</p>	<p>1 antagonising done, perhaps. I don't know. I really 2 don't know. 3 CHAIRMAN: Okay. 4 MR PENNICOTT: Mr Rodgers, can I invite you to look at your 5 second witness statement, please, for which I need to 6 get another file; just give me a moment. It's in 7 C32/24096. 8 If you could be shown, please, paragraph 14 on 9 page 24098. It so happens, Mr Rodgers, this is 10 a passage that we've looked at with another witness 11 before, because you helpfully set out the hat-colour 12 system in this paragraph. 13 What I want to focus on is (a), "Red hats indicated 14 banksmen"? 15 A. Yes. 16 Q. My understanding of a banksman is he's a worker who 17 directs the operation of a crane or large vehicles that 18 are carrying loads and maybe despatching loads, and so 19 forth. Is that right? Have I got that right? 20 A. No. Red hats -- partly. Red hats don't direct cranes. 21 Q. Right. 22 A. That's a blue hat. 23 Q. How would you describe a banksman? 24 A. That's a dockman or a rigger. 25 Q. Right.</p>
Page 14	Page 16
<p>1 CHAIRMAN: Okay. You see, while I'm sure everybody would 2 have been fully aware of your integrity, and that's not 3 in question in this question, you may have been able to 4 assist, would you agree, with something? You may have 5 been able to say, for example, "Oh, yes, he did come up 6 with some allegations, he did discuss it with me, we 7 went and did an inspection, and all we found was 8 something very normal and he's talking rubbish, 9 basically." Do you see what I mean? In other words, 10 you might have been able to put that email into full and 11 proper context. 12 A. Possibly -- 13 CHAIRMAN: Would you have expected somebody to come and have 14 a chat to you, therefore? 15 A. Probably -- not necessarily, because it might have been 16 antagonising -- something else that'll antagonise me. 17 At that particular time, I think there was issues with 18 China Technology getting things done. I do know there 19 was a lot of pressure on them, especially handing over 20 rooms, and I was putting a lot of pressure on them to 21 get people and get things done safely and clean up, and 22 all that sort of stuff. Perhaps -- I may be surmising, 23 I don't know, I'm not trying do make up things -- 24 CHAIRMAN: No, I appreciate that. 25 A. -- but I presume maybe they didn't just so there was no</p>	<p>1 A. Red hats are purely -- in Leighton's system, red hats 2 are there to direct plant and equipment like excavators, 3 reverse crane lorries or trucks into position, to 4 keep -- be a spotter for excavators and/or earth-moving 5 equipment. They may direct on-site traffic as well. If 6 they are doing directing work, under the Leighton system 7 they have to wear -- apart from the red hat they have to 8 wear a safety vest actually with LED lights, have a red 9 torch so the people can see them, and the trucks can see 10 them, so they can also give them signals depending on 11 which way they hold the torch, and a whistle as well. 12 Q. Thank you very much. The reason for focusing on that, 13 Mr Rodgers -- I expect you can see what's coming -- in 14 paragraph 17 of your second witness statement at 24099, 15 you comment upon the seven photographs that are attached 16 to Mr Poon's witness statement -- 17 A. Yes. 18 Q. -- first witness statement. In particular, you comment 19 at 17(b) on photo number 2, at D1/227. If that could be 20 put up, please. 21 You can't look at your statement and look at this 22 photograph at the same time. This is a problem. Let's 23 just -- we've seen the photograph -- 24 COMMISSIONER HANSFORD: He's got them both. 25 MR PENNICOTT: You have them both. The wonders of</p>

Page 17	Page 19
<p>1 technology. Thank you so much. Fantastic. Well done!</p> <p>2 Thank you, Kiki.</p> <p>3 You say about this photograph in 17(b) --</p> <p>4 A. Yes.</p> <p>5 Q. -- Mr Rodgers:</p> <p>6 "The red hats indicate that the workers are</p> <p>7 banksmen. They appear to be cutting the protruding</p> <p>8 diaphragm bars because of cover issues (cover issues are</p> <p>9 when the steel bar is too close to the finished surface</p> <p>10 level of the structure so may cause corrosion or</p> <p>11 durability issues). It looks like the diaphragm wall</p> <p>12 because of the twin rows of vertical bars, the bars look</p> <p>13 to have concrete dust on them, there are capping bars</p> <p>14 joining the vertical bars together and there is a white</p> <p>15 plastic sheet which is used just outside the diaphragm</p> <p>16 wall for concrete protection and waterproofing".</p> <p>17 A. Yes.</p> <p>18 Q. That's what you say at 17(b).</p> <p>19 Then if we could go on to paragraph 20, please, of</p> <p>20 your witness statement, you say this:</p> <p>21 "The only portable cutting machine I know of was</p> <p>22 a portable band saw. It was made by manufacturer,</p> <p>23 Hilti. It was a slow and cumbersome way of cutting</p> <p>24 rebar. To cut a 50 millimetre rebar would probably take</p> <p>25 around five minutes. It should only be used if a bar</p>	<p>1 the work that was cut in situ from the diaphragm wall,</p> <p>2 like issues with the cover -- bars, then that was</p> <p>3 Leighton's responsibility to cut.</p> <p>4 Q. Right. So Mr Cheung has told us that the two workers</p> <p>5 that we can see in this photograph at 227 were not</p> <p>6 Fang Sheung workers, and from what you've just said,</p> <p>7 I think you would accept that, would you?</p> <p>8 A. Yes, 100 per cent.</p> <p>9 Q. So you think these would be labourers hired by Leighton?</p> <p>10 A. Yes, correct.</p> <p>11 Q. That's very helpful. Thank you.</p> <p>12 CHAIRMAN: Can I just make sure I understand this. That</p> <p>13 photograph, on your estimation, appears to show, and</p> <p>14 I'll put it in blunt terms, a piece of rebar sticking</p> <p>15 up.</p> <p>16 A. Yes.</p> <p>17 CHAIRMAN: As I understand what you're saying, you're saying</p> <p>18 when the concrete pour comes about, that bit that's</p> <p>19 sticking up, if left there, could be right near the</p> <p>20 surface of the concrete pour or close to the surface and</p> <p>21 could therefore cause corrosion or durability issues?</p> <p>22 A. Yes, that is correct.</p> <p>23 CHAIRMAN: So what you want to do is cut it down so that</p> <p>24 it's well away from the surface?</p> <p>25 A. Yes, so we have the cover on the concrete which</p>
Page 18	Page 20
<p>1 needed to be cut in situ, such as if a protruding bar</p> <p>2 was attached to the diaphragm wall (as appears to be the</p> <p>3 case in photo 2 [that we have just looked at and are</p> <p>4 still looking at] ...)."</p> <p>5 Just pausing there, are you saying, Mr Rodgers, that</p> <p>6 the machine, the cutting machine we can see in the</p> <p>7 photograph, is the Hilti machine?</p> <p>8 A. Yeah. I'm not 100 per cent certain. I know Hilti do</p> <p>9 make one. Whether that one was a Hilti one or not,</p> <p>10 I can't say 100 per cent for sure, but it looks very</p> <p>11 similar, yes.</p> <p>12 Q. Sorry, you were going to add something?</p> <p>13 A. No.</p> <p>14 Q. I suppose the first question I would ask is: well, the</p> <p>15 two workers there are wearing red hats?</p> <p>16 A. Yes.</p> <p>17 Q. They are therefore, by your definitions, banksmen?</p> <p>18 A. Yes.</p> <p>19 Q. What are banksmen doing using a band saw, cutting rebar,</p> <p>20 Mr Rodgers? Have you any idea?</p> <p>21 A. Yeah, they can be used to do other work, apart from</p> <p>22 being banksmen. A banksman is what they are trained to</p> <p>23 do. They're not a general labourer as such. But as</p> <p>24 a general rule we had mostly banksmen with us, whether</p> <p>25 they were day labour or employed by us, and so any of</p>	<p>1 depending on -- I think it was about 70 millimetres,</p> <p>2 from our specification.</p> <p>3 CHAIRMAN: Okay. Now, you say -- so this type of work, the</p> <p>4 cutting work of these protrusions would be for Leighton,</p> <p>5 not for Fang Sheung? Fang Sheung just do the fitting?</p> <p>6 A. Yes. Anything to do with the cutting of the diaphragm</p> <p>7 wall bars that were either protruding into the cover</p> <p>8 zone of the slab maybe need to be trimmed to allow other</p> <p>9 bars to get through, if they were the installation bars.</p> <p>10 There are other areas where we cut where there were</p> <p>11 actually air pits for the -- that went through the</p> <p>12 diaphragm wall as well. These were all cut with the</p> <p>13 band saw blade because you can't use oxyacetylene; it</p> <p>14 eats the rebar.</p> <p>15 CHAIRMAN: And this work is done by Leighton, not by</p> <p>16 Fang Sheung?</p> <p>17 A. Correct, directed by Leightons, yes.</p> <p>18 CHAIRMAN: So would you expect to see Fang Sheung people</p> <p>19 using any sort of machine to cut rebars on site?</p> <p>20 A. No. Generally -- unless -- like I said, the only time</p> <p>21 you would cut -- use a machine to cut that rebar was if</p> <p>22 it couldn't be done in situ. They may use it to cut</p> <p>23 a bar if it -- say, the inspection was done and all the</p> <p>24 bars were tied around it and they could actually fit it</p> <p>25 in, they may decide to cut a bar in the slab that</p>

Page 21	Page 23
<p>1 they've set up just, same again, for cover issues, if 2 they hadn't bent a bar correctly, for argument's sake, 3 or it was a bit too long. But as a general rule, the 4 steel fixers would always use their hydraulic guillotine 5 machines, cutting machines. 6 CHAIRMAN: Thank you. 7 COMMISSIONER HANSFORD: Could I just ask, Mr Rodgers, is 8 that the lower layer of steel or the upper layer of 9 steel that they're standing on? Can you tell? 10 A. I can't -- I can only surmise -- I can't see the picture 11 because the court is over the top. 12 COMMISSIONER HANSFORD: Can we blow the picture up? 13 A. Or can you put it to the left-hand side again? 14 MR PENNICOTT: Does the "plus 1.02" give you a clue, 15 Mr Rodgers? 16 A. "Plus 1.02" is just an RL that gives them -- I think 17 it's the upper layer but I can't be 100 per cent sure. 18 It could be the bottom layer or the upper layer, for 19 argument's sake. 20 COMMISSIONER HANSFORD: I was just wondering -- 21 A. Sorry, all I do know is it must be close to one of the 22 edges, because of the white plastic there, because that 23 was done on the outside of the diaphragm walls. 24 COMMISSIONER HANSFORD: Yes. I was just wondering, 25 Mr Rodgers, if it were the lower level, why would one be</p>	<p>1 before -- or generally the formwork to be there before 2 they could tie reinforcement. So you had to put one 3 side of the wall up, then they would tie reinforcement, 4 then they had to close it up and pour the concrete. So 5 it was more a factor of enough people there to get the 6 formwork done. It was more time-consuming than, say, 7 the slabs. The slabs were more time-consuming with the 8 rebar, with the amount of rebar. 9 CHAIRMAN: All right. Then just one thing else. We've 10 heard from two sources now that the actual job, the 11 fitting the rebars, it was not an easy job; it was quite 12 a tough job. What would be your comment on that? 13 A. Yeah, it could be hard. It can be tough. 14 CHAIRMAN: I don't mean generally -- 15 A. More because of the size of the bars and the way the 16 layers worked, yes. 17 CHAIRMAN: On this particular job, that is? 18 A. I don't know. I can't 100 per cent really say. This is 19 probably the first job I've used couplers to the extent 20 that they have been used. In construction, as a general 21 rule, we don't use them that much in Australia. 22 CHAIRMAN: Thank you. 23 MR PENNICOTT: Just one last question on that photograph, 24 just to make clear the position, Mr Rodgers. I think 25 you may have answered this but perhaps not -- I will ask</p>
Page 22	Page 24
<p>1 concerned about cover issues of a protruding bar? 2 A. It could be also, if you get have a look at those bars, 3 get a gap in between so they can lay the horizontal bars 4 through -- I don't know. Just when I look at the 5 picture, it's just what comes to mind. And then seeing 6 the double-railed bars -- yes, it sort of reminds me of 7 the diaphragm. 8 COMMISSIONER HANSFORD: Okay, thank you. That's helpful. 9 MR PENNICOTT: Give me one moment. 10 CHAIRMAN: While Mr Pennicott is looking, can I ask you 11 something more general. You said you were putting 12 pressure on China Technology. 13 A. Yes. 14 CHAIRMAN: Would it be correct to say that you were also 15 putting pressure on other sub-contractors, such as 16 Fang Sheung? 17 A. Not as much. On the later stages of early 2017, there 18 was a big push, especially by the MTR, to get a lot of 19 these rooms handed over to the other contractors, like 20 1153 and 1173, all the people that were doing the 21 fit-out and the M&amp;E work, et cetera, for these rooms for 22 the station, because of the lead-time. So there was 23 probably more pressure on China Tech with formwork, 24 because the rooms were pretty much opposite the way the 25 EWL slabs work; it required the formwork to be there</p>	<p>1 you anyway -- the machine that you think is a Hilti 2 machine, was that owned by Leighton? 3 A. Could have been, yes. Could have been. But I think 4 a few different people would have it. They were 5 reasonably readily available. 6 Q. All right. Can I ask you to be shown a photograph, 7 please, at E5/1293. 8 If you blow the photograph up, please, and just go 9 down slightly so Mr Rodgers can see the red annotation 10 on the right. That's it. Thank you. 11 Mr Rodgers, you see a group of workers gathered 12 around a gentleman wearing black with a white helmet; do 13 you see that? 14 A. It's not black, it's navy blue. 15 Q. Yes. Is that person you? 16 A. Yes. 17 MR PENNICOTT: Thank you very much. 18 Sir, I've got no further questions. 19 CHAIRMAN: Thank you. 20 MR PENNICOTT: Thank you, Mr Rodgers. 21 Cross-examination by MR SO 22 MR SO: Good morning, Mr Rodgers. 23 A. Good morning. 24 Q. I represent China Technology. I have some questions for 25 you.</p>

Page 25	1 A. Yes. 2 Q. The first thing is, you just -- when you were answering 3 the Chairman's question about whether Fang Sheung 4 workers would have the chance of cutting rebars -- do 5 you recall that answer? 6 A. Which one? 7 Q. When you were answering the question of the Chairman, 8 you did mention that sometimes Fang Sheung workers would 9 cut the rebars? 10 A. I said they may cut the rebar when it was in situ. If, 11 say, it was tied in place and they had a cover issue or 12 there was some other issue and they couldn't remove the 13 rebar, then they may cut it, but if they needed to, as 14 a general rule, they would use their guillotine or their 15 hydraulic cutter. 16 Q. I just want to clarify one matter. When you say "they 17 may", have you actually seen that on the site in 18 SCL1112? 19 A. Fang Sheung? 20 Q. Yes. 21 A. No, not that I can recall. 22 Q. So, when you say they may cut the rebars, are you 23 referring to the threaded section of the rebar or the 24 unthreaded section of the rebar? 25 A. The unthreaded section of the rebar.	Page 27	1 out. 2 CHAIRMAN: So, in other words, an NCR by its nature may or 3 may not be serious? 4 A. Correct. 5 CHAIRMAN: The non-conformance may in fact be relatively 6 small and not of great moment. On the other hand, the 7 non-conformance may be very serious? 8 A. It could be. Generally, in construction, and in my 9 experience, the more serious of an NCR is how long it 10 takes to actually close out, because, you know, 11 sometimes, if it's serious and it's non-conforming, it 12 just can't be closed. 13 COMMISSIONER HANSFORD: Mr Rodgers, sorry. Is 14 a non-conformance report different to a warning letter? 15 A. I think the general rule -- non-conformance is something 16 that doesn't conform to the specification or whatever. 17 Something a bit more serious is a corrective action 18 report, and a warning letter is probably more to do with 19 contractual than anything, under the quality system. 20 COMMISSIONER HANSFORD: So your understanding or what you're 21 telling us is non-conformance reports, corrective 22 actions and warning letters are three different things? 23 A. I think so. Under what I understand, quality, it's more 24 about non-conforming, it's the product, so it doesn't 25 meet the specification, it can be corrected or it can be
Page 26	1 Q. I wish to move to another topic. On occasions we heard 2 from evidence that Leighton might put dowels into the 3 diaphragm wall when there were problems in the couplers. 4 Were you aware of that? 5 A. No. 6 Q. So you were not aware that sometimes it would be 7 requested by Fang Sheung workers that certain couplers 8 don't actually work, so Leighton would fix dowels; you 9 are not aware of this? 10 A. No, that is correct. 11 Q. When Mr Pennicott was referring you to the NCR157, you 12 told us you were not aware of that NCR; correct? 13 A. Correct, I'm not -- I don't recall it, no. 14 Q. Did you recall engineers, any engineers from Leighton, 15 mentioning to you verbally or on paper, in writing, that 16 they saw any cuttings of the threaded section of the 17 rebar? 18 A. No, I did not. 19 Q. So presumably you would also accept that an NCR would 20 only be issued if there are certain serious matters 21 occurring in the site; correct? 22 A. It's a non-conformance so it's not -- how would you put 23 it? It's a non-conforming report which means it doesn't 24 conform to the specifications. The seriousness of it is 25 usually probably calculated on how quick it is closed	Page 28	1 said that it doesn't hinder the thing the client may 2 approve it. A corrective action means you've got to do 3 something to correct the actual situation. And 4 a warning letter, I think the warning letter sent to, 5 say, a sub-contractor or someone is more about 6 contractual issues. 7 COMMISSIONER HANSFORD: Thank you. That's helpful. 8 MR SO: I just want to follow up that point, Mr Rodgers. 9 Insofar -- you can tell us if you don't know -- how many 10 NCRs were issued in SCL1112? 11 A. I've got no idea. 12 Q. All right. Thank you. 13 Can I just bring you to the first witness statement 14 you have given to the Commission. Can I go to 15 paragraph 19. In the witness statement, you mentioned 16 that money became an issue for China Technology; 17 correct? 18 A. Yes, I believe so. 19 Q. Insofar as I understand, you, being the superintendent 20 of the site, your primary responsibility is the 21 technical side of the project, namely project safety and 22 the progress; is that right? 23 A. My first priority was safety, and then which followed 24 productivity from there, yes. 25 Q. So is it correct that the financial aspect of the

Page 29	Page 31
<p>1 project is not something that you would have knowledge 2 of? 3 A. I would understand some -- there were some meetings 4 I attended where it was spoken about, yes. 5 Q. Can I suggest to you that you were simply speculating 6 that money has become an issue for China Technology? 7 A. Yes, that's correct. 8 Q. Can I just move on -- in the same paragraph you say you 9 believe that Jason Poon reduced the grade of workers 10 that did attend site. Did you actually know about it? 11 A. Yeah, I believe so, just by looking at how they did 12 things on site, yes. 13 Q. So did anyone tell you that they had workers with less 14 experience coming into the site, or you are just 15 speculating? 16 A. No, no, just from what I could see from the work that 17 was being done, how quickly it was being done, the 18 issues we had with the formwork collapsing and that, 19 yeah, I would say the grade of workers would be less. 20 Q. Can I bring you down to paragraph 22. There you said 21 you heard some of the staff had taken Mr Poon to the 22 Labour Tribunal for unpaid wages; correct? 23 A. Yes, that's correct. 24 Q. I have to put it to you that that is again speculation. 25 A. No. Like I said, it was only a comment that was made to</p>	<p>1 A. Yeah, that's correct, yes. 2 Q. You were arrested on 13 March 2017. Do you have a rough 3 recollection of that? 4 A. Yeah. I don't know the date, but I do know it was after 5 Chinese New Year. 6 Q. And of course you were legally advised at that time, 7 I presume; correct? 8 A. Yes. 9 Q. And you were eventually brought to the Magistrates' 10 Court for bound over, according to what you say in your 11 witness statement; correct? 12 A. That is correct, yes. 13 Q. On that occasion, when you were bound over in the 14 Magistrates' Court, was Mr Poon with you together? 15 A. No. 16 Q. Mr Rodgers, I have to put it to you Mr Poon was simply 17 never charged. 18 A. Okay. That's fine. 19 Q. So where did you get the information from that he was 20 charged and bound over? 21 A. No, I just assumed he was, that was all. 22 Q. So you were guessing? 23 CHAIRMAN: Well, he's assuming, yes. 24 MR SO: Mr Rodgers, I have to put it to you that the police 25 actually also told you that one of the reasons that you</p>
Page 30	Page 32
<p>1 me -- 2 CHAIRMAN: Does that help me? Sorry, does that help me? 3 I mean, he's heard this. Is there any substance in it 4 or not? It helps me if you say it didn't happen, or it 5 may help me if you say, "Yes, we accept it did happen; 6 we will explain later the circumstances" or something. 7 MR SO: I put it to him that it did not happen, so that's 8 complete speculation. 9 CHAIRMAN: Would you accept, if you were told it didn't 10 happen, that perhaps that didn't happen? 11 A. Sorry, is that directed to me? 12 CHAIRMAN: Sorry, yes, about being taken to the Labour 13 Tribunal. It's suggested it didn't happen. What would 14 be your answer? 15 A. It would be the same thing. It's easy enough to see. 16 Like I said, it was just a comment that was made to me. 17 But if it was taken to the Labour Tribunal, then it 18 would be on record, I presume, with the Labour Tribunal, 19 so one way or the other it can be checked. 20 MR SO: Can I bring you to the last bit, paragraph 23. In 21 paragraph 23, you mentioned -- you described, actually, 22 Mr Poon as being an aggressive and manipulative 23 individual, and you provided the reason, because both 24 yourself and Mr Poon were arrested on one occasion and 25 were bound over; is that correct?</p>	<p>1 were bound over is because Mr Poon agreed that you would 2 be bound over in this common assault case. 3 A. No. That is incorrect. 4 Q. Do you agree or disagree? 5 Sorry, I cannot hear your answer. 6 A. No. 7 MR SO: I have no further questions. 8 CHAIRMAN: Thank you. 9 Yes? 10 Cross-examination by MR KHAW 11 MR KHAW: Mr Rodgers, I am acting for the government and 12 I have a few questions to ask. 13 A. Yes. 14 Q. May I take it that you are still working for Leighton? 15 A. No, I am not. 16 Q. When did you leave Leighton? 17 A. Sorry? 18 Q. When did you leave Leighton? 19 A. April 2018. 20 Q. I see. And you are still working in the construction 21 industry, I guess? 22 A. That is correct, yes. 23 Q. If we can take a look at the organisation charts of 24 Leighton, which would tell us the workforce and also 25 your position. That is C7/5536.</p>



Page 33	Page 35
<p>1 We can blow that up a little bit and try to find 2 your name. Got it, yes. 3 We can see that there are various supervisors 4 working under you; right? 5 A. Yes. 6 Q. And the position was more or less the same in 2016; is 7 that correct? Because this organisation chart shows the 8 position in 2015, when the project just started. 9 A. Yeah, pretty much, I think. 10 Q. So you were supported by quite a big team of 11 supervisors, technicians and foremen; is that correct? 12 A. That is correct, yes. 13 Q. Now, as a superintendent, I just want to know more about 14 your responsibilities. 15 A. Yes. 16 Q. Am I correct to say that you would be responsible for 17 providing on-site coordination for all phases of the 18 project? 19 A. Of that particular area, yes. 20 Q. And you were also responsible, obviously, for 21 coordinating sub-contractors? 22 A. Yes. 23 Q. And one of your main duties was to ensure that all the 24 specifications were strictly followed? 25 A. At a high level, yes.</p>	<p>1 Q. Right. 2 A. The majority of it had been done. 3 Q. Can you tell us the reason why you were at that time 4 assigned to another project? 5 A. They had a safety issue over there. The general manager 6 had gone to the other project and pretty much told me if 7 they didn't sort it out then a lot of people were going 8 to get sacked. They directed me over there because 9 I had been doing a lot of that work and probably being, 10 I suppose, what do you call it, a gweilo would help out 11 with getting the safety fixed up and the system of being 12 actually able to do the work safely, done better. 13 Q. I see. So you were asked to deal with the safety issues 14 in relation to that particular project which were quite 15 important? 16 A. There were -- same again, there was a fair bit of time 17 pressure over there. There was a heavily reinforced 18 concrete arrival deck at the passenger clearance 19 building. There was issues with steel fixing, working 20 at heights, and the method of actually having to do the 21 work. So it was more about someone being there all the 22 time to tell people what to do and at what particular 23 time to do it, all that sort of stuff, work with the 24 cranes. 25 Q. Can you tell us, before you were assigned to work on</p>
Page 34	Page 36
<p>1 Q. And in your witness statement, you also talked about 2 safety as your first priority; do you remember that? 3 A. Yes, that was -- 4 Q. Now, in relation to safety, I suppose it has two aspects 5 in relation to your job. Correct me if I am wrong, one 6 aspect obviously is to ensure the safety of the site, ie 7 the site safety for workers; right? 8 A. Correct. That was my major -- 9 Q. Another aspect of safety is obviously to ensure that the 10 works carried out would comply with quality requirements 11 in order to ensure safety for future use? 12 A. Correct. 13 Q. In your witness statement, you have also described your 14 routine and inspection; do you remember that? 15 A. Yes. 16 Q. Perhaps before we go into this area -- you just told us, 17 I believe, when Mr Pennicott asked you some questions, 18 that you actually were assigned to work for another 19 project after Chinese New Year in 2017? 20 A. Yes. 21 Q. At that time, this Hung Hom project was still under 22 quite a lot of time pressure; is that right? 23 A. Yeah, mainly with the room handover, the rooms and the 24 area handover to the different -- the following 25 contractors.</p>	<p>1 another project, after Chinese New Year 2017, when you 2 were still working for the Hung Hom project, were you at 3 the same time also responsible for other projects? 4 A. No. 5 Q. Just Hung Hom project at that time? 6 A. Yes, correct. 7 Q. Okay. Thank you. 8 You remember in your witness statement you talk 9 about your work including the fact that you walked 10 around the site in the morning with the supervisor for 11 that particular area, observing their works, and you 12 also discuss issues or problems relating to safety, 13 production or working conditions with your team. Do you 14 remember that? 15 A. Yes, correct. 16 Q. I just want to know whether this sort of routine duty 17 on site that you were responsible for involved 18 personally supervising and inspecting coupling works? 19 A. No. 20 Q. So there would be another team of supervisors who were 21 responsible for coupling works; right? 22 A. Generally, it was done, as I understand it, with the 23 engineers and the supervisor, with possibly Fang Sheung 24 as well. 25 Q. Yes. So am I correct in saying that you personally</p>

Page 37	Page 39
<p>1 would have close contact with Fang Sheung people? 2 A. No, not necessarily, because number one, none of them 3 spoke -- there was only one that spoke English. 4 Everyone else spoke Cantonese or Chinese. So it was 5 more on -- if I needed anything from Fang Sheung, it 6 would either be with my supervisor or with the engineer. 7 Q. Right. So am I correct in saying that you sort of 8 delegated the supervising and inspection work to the 9 site supervisors for the purpose of looking at the 10 coupling works done by Fang Sheung? 11 A. Supervisors and engineers, correct. 12 Q. And how many quality control supervisors from Leighton 13 were there for the purpose of taking care of the 14 coupling works? 15 A. Just the supervisors we have, that was -- part of their 16 brief was safety/quality. It's Leightons' requirements, 17 they're a part of that, with the engineers. 18 Q. I see. Can you just name a few people who are the sort 19 of key people responsible for taking care of the 20 coupling works, ie supervising the coupling works? 21 A. Any of those guys up there generally. Chan Chi Ip, 22 Leung Yuk Ming; they had a couple of others there. 23 Jerry Tse would have done couplers in area A. Wong 24 Chun Hong would do it as well. There's a couple missing 25 off that. The guy under Jon Bayliss also, Kwok Wa</p>	<p>1 full supervision by RC of the mechanical coupler 2 works ... 3 The minimum qualification and experience of the 4 quality control supervisors are to be the same as grade 5 T3 (TCP), as stipulated in the Code of Practice for Site 6 Supervision." 7 Now, are you aware of the Code of Practice for Site 8 Supervision? 9 A. No. 10 Q. You are aware of the meaning of "grade T3 (TCP)"? 11 A. No. 12 Q. So are you aware of any supervision requirements for 13 coupling works? 14 A. Only under the general supervision, and -- the engineers 15 may be, but I am not. 16 Q. Only under general supervision? I see. So any 17 particular requirements that you are aware of for the 18 purpose of supervising coupling works? 19 A. No. 20 Q. Without any parameters, then how did you know how to 21 ensure that supervision work was properly done, as 22 a superintendent? 23 A. That there was no issues with the MTR, nothing raised, 24 the engineer signed off as well with the inspections 25 with the MTR.</p>
Page 38	Page 40
<p>1 Tsang, Lau Kam Yip. 2 Q. Anyone else? 3 A. Any of those guys. There was couplers -- in any of 4 those areas there were couplers as well. They would 5 all -- like I said, with the engineers as well. 6 Q. So they were working closely with Fang Sheung; is that 7 right? 8 A. Sorry? 9 Q. They were working closely -- 10 A. Yes, if the steel fixers were there, then they would 11 work with Fang Sheung, yes, correct, they would. 12 Q. Have you ever seen a document called the quality 13 supervision plan? 14 A. Have I seen a document called -- I don't know. Which 15 document are you referring to? 16 Q. Quality supervision plan. Can I just take you to have 17 a look at H9/4265. 18 A. No, I don't think so, no. 19 Q. 4277? 20 If you can take a look at 4269, have you ever come 21 across this document called "Quality supervision plan"? 22 A. No. 23 Q. If we can go to 4267, under (b), we can see that -- it 24 says: 25 "The frequency of the quality supervision should be</p>	<p>1 Q. Right. So do you know whether there was any parameter 2 that your supervisors would apply for the purpose of 3 supervising and inspecting coupling works? 4 A. Sorry, what was the question again? 5 Q. Do you know whether there was any parameter, any 6 standard, that your supervisors would apply for the 7 purpose of supervising and inspecting coupling works? 8 A. No, not that I'm aware, but like I said the engineers 9 may have had a way of doing that with the supervisors. 10 Q. Right. So I suppose the supervisors would report to you 11 on a regular basis regarding their work; is that 12 correct? 13 A. We walked around the site, to check their areas, the 14 areas they were in control of, yes, on a daily basis. 15 Q. Right. Were you aware of any incident where coupling 16 works were actually carried out in the absence of 17 Leighton people? 18 A. No. Not that I could say. 19 Q. And your knowledge was based on what your supervisors 20 told you; is that right? 21 A. The on-site supervision, yes. 22 Q. Sorry, my question was: your knowledge was based on what 23 your supervisors told you; is that right? 24 A. Yes. 25 Q. You know whenever coupling works were carried out by,</p>

Page 41

1 for example, Fang Sheung bar fixing workers, for  
2 a particular bay, how many people from Leighton would be  
3 there to supervise their work? Do you know? Can you  
4 give us a rough figure?  
5 A. In each of the areas, there was a supervisor or senior  
6 supervisor. Under him would be either two or three  
7 either foremen or junior foremen, depending on the area.  
8 Also, within that, there would be a site agent, then  
9 they had engineers with them as well, maybe three or  
10 four. So, yeah, any particular area could have at least  
11 six staff of Leightons.  
12 Q. Did you keep any record for the daily sort of routine  
13 work that you did regarding your site visits or site  
14 walk?  
15 A. No. We just do the site walk and then each day, as I've  
16 said in my statements, we had a site meeting with my  
17 supervisors, engineers, and the sub-contractors,  
18 Fang Sheung and China Technology.  
19 Q. Right. So, if you encounter any problems during your  
20 site walk, site visit, every day, then did you have  
21 a problem of putting in -- putting the problems or  
22 recording the problems into a particular document?  
23 A. No. No. As a general rule, most of the problems we had  
24 or I had within the areas was generally of a safety  
25 nature or a production nature in regard to material

Page 42

1 getting in there or out of there, et cetera, as  
2 a general rule.  
3 Q. If you can take a look at your first witness statement,  
4 paragraph 16 -- C20687 -- there you said:  
5 "I would have meetings every day, usually at  
6 4.30 pm, with my senior supervisors, Leighton's  
7 engineers and representatives of Fang Sheung and China  
8 Technology."  
9 So am I correct to say that you in fact did have  
10 meetings with Fang Sheung people every day, but probably  
11 you did not personally talk to them? You asked your  
12 colleagues to talk to them; is that correct?  
13 A. I didn't, unless there was an issue with Fang Sheung,  
14 then I might ask questions that had to be translated,  
15 yes.  
16 Q. Now you are aware of the three incidents regarding  
17 defective bar fixing works which occurred in 2015,  
18 according to the evidence of Edward Mok -- now you are  
19 aware of that, right?  
20 A. Yes.  
21 Q. But you told us that you were not aware of any single  
22 incident regarding defective bar fixing work until June  
23 this year; right?  
24 A. Yes, as far as I'm aware, yes.  
25 Q. You were also not aware of the NCR until then; right?

Page 43

1 A. Correct.  
2 Q. I just want to ask you whether you actually were given  
3 any NCRs during your work at the Hung Hom site, any  
4 other NCR were you given?  
5 A. Not on a quality issue. There were safety ones that  
6 were assigned to me. I can't honestly say there was any  
7 quality NCRs given to me.  
8 Q. Right. Because we asked Mr Plummer yesterday whether,  
9 at the material time, he was aware of the NCR and he  
10 said no. Today we are asking you and you also were not  
11 aware of the NCR until recently. I just want to know  
12 how your people actually decided whether to give you  
13 an NCR or not. Is that a particular area?  
14 A. Sorry?  
15 Q. Is that a particular area relating to a particular  
16 non-conformance that they would report to you, or there  
17 are some other areas that they would not report to you?  
18 I just want to know --  
19 A. Like I said before, it would probably depend on how  
20 quick it was closed out. It's like most things in life.  
21 You can raise an NCR for anything, as long as it's  
22 non-conforming to the specification or supply material  
23 or whatever. If it's closed out quickly, it's not  
24 classed as a big issue, I suppose. If you get NCRs  
25 regularly, like daily or weekly, then I presume the MTR

Page 44

1 would have raised a corrective action.  
2 COMMISSIONER HANSFORD: Can I ask, Mr Rodgers: is your  
3 understanding that NCRs are issued to you by MTRC, or is  
4 it your understanding that Leighton raises NCRs to MTRC?  
5 Which way around is it?  
6 A. You can -- Leightons raise an NCR, so they can raise  
7 an NCR for anything, especially if they know it's  
8 non-confirming. So you can raise an NCR, for argument's  
9 sake, that the finished surface level of concrete  
10 doesn't meet the specification, your corrective action  
11 for that may be to leave as is. All right? But the MTR  
12 can raise an NCR as well.  
13 COMMISSIONER HANSFORD: Okay. Thank you.  
14 MR KHAW: Can we now have a look at paragraph 25 of your  
15 first witness statement. You said:  
16 "While I was working on the project, I was never  
17 aware of any threaded ends of rebars being cut off.  
18 I know now that one of Leighton's engineers, Edward Mok,  
19 identified rebars ..."  
20 You are talking about the three occasions in 2015.  
21 "I would generally only find out about defects that  
22 were addressed immediately (for example as  
23 work-in-progress rectifications) if I came across them  
24 during my rounds of [visit]. I am therefore not  
25 surprised that I did not learn about the defective

Page 45	Page 47
<p>1 rebars identified by Edward Mok." 2 Just pausing here, you told us that in general, you 3 found out defects which were identified at the time when 4 you carried out your site visit; right? 5 Can you hear me, Mr Rodgers? 6 A. I can hear you. Can you ask the question again? 7 Q. Yes. Here you said: 8 "I would generally only find out about defects that 9 were addressed immediately (ie as work-in-progress 10 rectifications) if I came across them during my rounds 11 of the site." 12 Obviously, during your rounds of the site, you might 13 not be able to pick up all problems; do you agree? 14 A. Yeah. 15 Q. So you would have to rely on other people to report to 16 you what problems were identified; is that correct? 17 A. Yes. 18 Q. So how did you keep track of the performance of the 19 works? 20 A. Generally by not being able to do the progress more than 21 anything. If there was a major NCR that couldn't be 22 closed out, then that would stop a concrete pour 23 happening, so therefore it would be a problem with the 24 programme, so therefore, like I said, it would become 25 a major issue or a major NCR, because it couldn't be</p>	<p>1 Q. You were not aware of any incident where, because of 2 defective coupler on the diaphragm wall, then something 3 called a dowel would need to be inserted on the 4 diaphragm wall? You were not aware of any incident? 5 A. Not that I'm aware of. Nothing that comes to mind. 6 There could have been. It would have been 7 an engineering solution. 8 Q. Now, earlier on, when you answered the Chairman's 9 question, when he asked you about whether Fang Sheung 10 people would need to use the cutter to cut steel bars, 11 you told us what you thought would be the occasion when 12 such an act would be carried out; do you remember that? 13 A. Yes. 14 Q. Can you recall whether you actually heard -- from your 15 supervisors, from your colleagues or from anyone on the 16 site -- that such cutting was done on the site? 17 A. No. Not as a general thing -- what, specifically 18 Fang Sheung? 19 Q. So when you were answering Chairman's question, on what 20 basis did you come to a view that this could be 21 an occasion where cutting was required? 22 A. As I said to the Chairman, I think the only reason 23 I would see that a steel fixer would use the electric 24 cutter to cut a bar would be if it was in situ, and say 25 there was an issue with cover, after the steel had been</p>
Page 46	Page 48
<p>1 closed out quick enough, but generally, if something is 2 raised and it's closed out maybe on that day or the next 3 day or whatever, and it didn't affect how progress went, 4 then I might not necessarily know about it. 5 Q. So you talk about "a major NCR", so in your mind you 6 would be able to differentiate a major NCR from a minor 7 NCR; right? 8 A. The way I generally differentiate between a major and 9 a minor one is how quick they get closed. 10 Q. I see. So now if you have a chance to look at the NCR 11 regarding the bar fixing work, which was found in 2015, 12 would you regard it as a major NCR or a minor NCR, since 13 it involved cutting of rebars? 14 A. I would probably have to say a major one. I would be 15 surprised -- I'd want to know why, put it to you that 16 way. 17 Q. And when you were on the Hung Hom site, were you ever 18 aware of any incident where couplers on a diaphragm wall 19 were found to be defective after they were exposed? 20 A. No. 21 Q. Not a single incident? 22 A. Sorry? 23 Q. Not a single incident? 24 A. Not that I'm aware of, no, or nothing that was, like 25 I said, probably held up production.</p>	<p>1 tied, and it was actually quicker to use that than to 2 then actually take the bar and get it cut. That would 3 probably be the only reason. 4 But they weren't small machines either, so, you 5 know, they had to have a bit of room around them to 6 actually use them. 7 Q. Okay. If we can go to paragraph 22 of your second 8 witness statement. That should be C24101. There you 9 mention in the last four lines: 10 "If the threaded end of a rebar was damaged, the 11 workers would just go to BOSA and have it rethreaded or 12 get a new bar. There was no good reason for a worker to 13 get the band saw and spend minutes cutting off the end 14 if it was damaged. It would be quicker ... to get a new 15 bar." 16 Do you see that? 17 A. Yes. 18 Q. How long would it take for workers to go to BOSA and get 19 a rethreaded bar? 20 A. It wouldn't take long. BOSA were doing threading on 21 site in the early stages. 22 Q. So if Fang Sheung workers on site would need to get 23 rethreaded rebar, they could actually go to BOSA 24 directly, or they have to go through you; do they have 25 to go through Leighton?</p>

Page 49	Page 51
<p>1 A. We supplied the threaded bar -- or Leighton supplied the 2 threaded bar to Fang Sheung, for them to either bend 3 ends on them or to cut them to length as required. 4 There were a lot of threaded bars supplied to 5 Fang Sheung. 6 Q. So, on site, they could contact BOSA people for 7 replacement; is that what you are saying? 8 A. Or go through the supervisor, yes. 9 Q. Were you aware of any occasion where, during the bar 10 fixing works, there was insufficient supply of threaded 11 bars regarding type A couplers? 12 A. No. 13 Q. How did you know that if one is to cut a threaded rebar 14 by using a band saw, it would take minutes? Have you 15 tried that yourself? 16 A. Yeah. Like I said to the Chairman, before those photos 17 of the bars that are getting cut in the diaphragm wall, 18 we cut any of the protruding bars out of the diaphragm 19 wall that were either in the cover zone or required to 20 be taken out for any of the air ducts through the 21 diaphragm wall. 22 Q. Just for avoidance of any possible confusion, when you 23 were talking about portable band saw, if I can take you 24 to have a look at a picture. C40. Or maybe we can 25 actually see the real thing instead of just a picture.</p>	<p>1 Q. We heard some evidence from Mr Joe Cheung of Fang Sheung 2 yesterday. You know him; right? You know Joe Cheung; 3 right? 4 A. Yes. He was the on-site foreman for Fang Sheung. 5 Q. Yes. Were you in contact with him regularly on site? 6 A. He was on site regularly each day, yes. He would come 7 to the 4.30 meetings each day, yes. 8 Q. Right. According to his evidence, under Fang Sheung's 9 contract with Leighton, the repair or replacement of 10 couplers was not within the scope of duties of 11 Fang Sheung. 12 A. Yes. 13 Q. Would you agree? 14 A. Yes. 15 Q. Were you aware of any incident where repair work was 16 required for couplers on site? 17 A. No, not -- no, I can't say, no. There probably would 18 have been some. 19 Q. There probably would have been some? 20 A. Yes. 21 Q. Right. So you were only aware of actual incidents where 22 couplers were replaced but not repaired on site; right? 23 A. No, not even replaced. As I said before, unless there 24 was an issue, say the coupler -- they couldn't be 25 repaired or replaced, or there was some other major</p>
Page 50	Page 52
<p>1 (A physical exhibit was held up to the camera) 2 Is it the portable band saw that you were referring 3 to? 4 A. Correct, yes. 5 Q. Thank you. So it's like an electrical saw? 6 A. Yes. It's got a saw -- it's a saw with a blade. 7 Q. Right. 8 If we can go back to paragraph 20 of your witness 9 statement, just to understand a bit more about the 10 situation where cutting of rebar would be required 11 on site. Here you said: 12 "The only portable cutting machine I know of was 13 a portable band saw. It was made by manufacturer ..." 14 I think Mr Pennicott has referred you to this. 15 "It was a slow and cumbersome way of cutting rebar. 16 To cut a 50mm rebar would probably take around five 17 minutes. It should only be used if a bar needed to be 18 cut in situ, such as if a protruding bar was attached to 19 the diaphragm wall ..." 20 So apart from the situation where a protruding bar 21 was attached to the diaphragm wall, which according to 22 your evidence would need cutting of rebar, were you 23 aware of any other situation where cutting of any rebar 24 would be required on site? 25 A. No.</p>	<p>1 issue that would hold up our pour dates, then I would 2 know about it. But I don't know of any of them. 3 Q. Were you aware of any incident where Leighton's direct 4 labourers or any labourers hired by Leighton were 5 responsible for doing any part of the bar fixing work 6 for this project? 7 A. No, not that I'm aware. As I said before, about the 8 only thing we did with -- involving the rebar was 9 anything to do with the diaphragm wall in regards to 10 bars having to be cut off removed for any of the air 11 ducts, or if they are in cover zones, or some other 12 rectification needed to be done. 13 Q. Right. Now can we take a look at some of the pictures 14 that you refer to in your second witness statement. If 15 we can take a look at D1/227. 16 We can see two workers wearing red hats; you saw 17 that? 18 A. Yes. 19 Q. And apparently, wearing red hats means that they were 20 banksmen; is that correct? 21 A. They were trained as banksmen, yes. 22 Q. And people from Fang Sheung actually told us that they 23 did not have any banksmen wearing red hats. Do you 24 agree? 25 A. Yeah, they would say that, yes.</p>

Page 53

1 Q. And you agree?  
2 A. Yes.  
3 Q. So would you know who employed them?  
4 A. These guys here?  
5 Q. Yes.  
6 A. I would say they're a sub-contractor but they are  
7 doing -- like I said to you, it seems like they are  
8 doing work for us. As I said before, I think it's  
9 for -- on the diaphragm wall.  
10 Q. So are you saying that apart from Fang Sheung, Leighton  
11 also engaged another sub-contractor for doing bar fixing  
12 work?  
13 A. No, I am not.  
14 Q. So when you talk about sub-contractor, you are talking  
15 about sub-contractor doing the work that we can see from  
16 the pictures; right?  
17 A. Correct.  
18 Q. And apparently their work is bar fixing work; right?  
19 A. No. No. Those guys -- I think I've said before --  
20 Leightons did not have many direct employee labour. We  
21 would hire labour from other sub-contractors on a daily  
22 basis for daily works.  
23 Q. I see. So those workers, apparently -- because from  
24 this picture they were working on reinforcement bars --  
25 they would be working with Fang Sheung workers on site;

Page 54

1 is that correct?  
2 A. They would have been directed -- looking at the picture  
3 and surmising that it is the diaphragm -- as I said  
4 earlier, it looks like it's part of the diaphragm wall  
5 because of the location of it, with the white plastic  
6 there -- and looking at what they are doing with the  
7 vertical bars they are cutting, they are cutting the  
8 vertical bars on the diaphragm wall, for either cover  
9 issues or for the rebar to be able to be placed in its  
10 proper position, as this was not Fang Sheung's work or  
11 under their contract.  
12 Q. I see. If we can take a look at 232. You told us that  
13 they were also not Fang Sheung workers; right?  
14 A. Sorry, these ones?  
15 Q. You said they were Fang Sheung workers; correct?  
16 A. To me, if you ask me the question, I would say they were  
17 Fang Sheung workers, yes.  
18 Q. On what basis do you say that?  
19 A. Because generally they wore yellow hats, probably the  
20 gloves they're wearing, probably their attire.  
21 Q. Any particular features in those areas that you could  
22 identify for the purpose of telling us that they were  
23 Fang Sheung workers?  
24 A. No, not necessarily. We didn't have much general  
25 labour.

Page 55

1 Q. Leighton workers would also wear yellow hats; right?  
2 A. As a general rule, we did not have that many general  
3 labourers that worked for Leightons. Most of our guys  
4 that worked -- that we hired on a daily basis would have  
5 been banksmen or riggers or dockmen.  
6 Q. But you just told us, when we were looking at 227 --  
7 A. Yeah.  
8 Q. -- that they were Fang Sheung's workers; right? Sorry,  
9 they were Leighton's workers; right?  
10 A. Yes.  
11 MR WILKEN: Actually, his answer was they were  
12 sub-contracted labour that Leighton had taken, hired.  
13 MR KHAW: I'm sorry, yes. Yes.  
14 If we go back to 232, you said you could identify  
15 from the hats, the gloves, et cetera, that they were  
16 Fang Sheung workers.  
17 A. No, I never said that I could identify that they were  
18 Fang Sheung workers. I said, if asked the question,  
19 I would say they were probably Fang Sheung workers;  
20 all right? Mainly because they had the gloves, their  
21 attire, it's a bit dirty, I suppose, and most of  
22 Fang Sheung workers wore nondescript uniform.  
23 Q. If you can then take a look at 228. What do you think  
24 that worker was doing?  
25 A. It looks like he is cutting the threaded bar.

Page 56

1 COMMISSIONER HANSFORD: Sorry, can we blow this photo up?  
2 Thank you. Sorry.  
3 MR KHAW: Can you tell us, according to what you can see  
4 from this picture, what this worker was doing?  
5 A. It looks like he is cutting the threaded bar.  
6 Q. Right. Can you tell us whether there was any reason for  
7 him to do so?  
8 A. I cannot think of a reason.  
9 Q. If you or somebody witnessed this worker doing this kind  
10 of activity, would that raise concern?  
11 A. Yes, it would. I would ask the question.  
12 Q. If you or any of your colleagues saw a particular worker  
13 doing such -- carrying out such an activity, like what  
14 you said, he was apparently cutting a threaded rebar,  
15 would that raise concerns?  
16 A. Yes, I think it should, yes.  
17 Q. From this picture, can you tell us whether he is  
18 Leighton's worker or not?  
19 A. No, I can't say for certain.  
20 Q. We can blow this up and you can see his hat and also his  
21 clothing clearly.  
22 A. Yes.  
23 Q. Any idea where he came from?  
24 A. Like I said, if I was shown that straight up, I would  
25 say he was a steel fixer, mostly because of his attire

Page 57	Page 59
<p>1 and the gloves and having a yellow hat.</p> <p>2 Q. Am I correct in saying that daywork labour engaged by</p> <p>3 Leighton would also wear yellow hats?</p> <p>4 A. If they were general labour. As I said before --</p> <p>5 Q. Yes, so --</p> <p>6 A. -- generally we didn't have that many general labourers.</p> <p>7 Most of our people were banksmen or riggers.</p> <p>8 Q. Let me put it this way. General labourers engaged by or</p> <p>9 hired by -- directly hired by Leighton would wear yellow</p> <p>10 hats; that is correct, right?</p> <p>11 A. Yes. Generally people who weren't banksmen or riggers,</p> <p>12 or they didn't hold a high-class risk position on site,</p> <p>13 so carpenters could hold a -- could have a yellow</p> <p>14 helmet. Who else? General labourers, jackhammer people</p> <p>15 can have a yellow helmet, they're general labourers as</p> <p>16 well.</p> <p>17 Q. Would Leighton also hire general labourers as</p> <p>18 sub-contractors, not directly employed by Leighton?</p> <p>19 A. What are you saying: that would Leighton hire</p> <p>20 sub-contractors who wore yellow helmets?</p> <p>21 Q. Yes, and they work as general labourers.</p> <p>22 A. Could I clarify the -- can you clarify the question</p> <p>23 again in what you're looking for?</p> <p>24 Q. Of course. You just told us that Leighton directly</p> <p>25 employed general labourers, and such general labourers</p>	<p>1 Questioning by THE COMMISSIONERS</p> <p>2 COMMISSIONER HANSFORD: I have a question.</p> <p>3 Mr Rodgers, as a superintendent, I'm interested in</p> <p>4 your priorities.</p> <p>5 Could you just tell me, between progress and safety,</p> <p>6 which was the higher priority for you and for Leighton?</p> <p>7 A. Safety.</p> <p>8 COMMISSIONER HANSFORD: Safety was the higher priority.</p> <p>9 Similarly, between progress and quality, which was the</p> <p>10 higher priority for you and for Leighton?</p> <p>11 A. It would be quality.</p> <p>12 COMMISSIONER HANSFORD: Quality would take priority over</p> <p>13 progress?</p> <p>14 A. As a general rule, and being a longstanding company,</p> <p>15 then at the end of the day, if the quality is not</p> <p>16 correct, then you'll pay the price eventually.</p> <p>17 COMMISSIONER HANSFORD: So that would mean, would it, that</p> <p>18 the priority order is safety, then quality, then</p> <p>19 progress?</p> <p>20 A. Yeah, yeah, I would say that.</p> <p>21 COMMISSIONER HANSFORD: Thank you.</p> <p>22 CHAIRMAN: Anything arising?</p> <p>23 MR WILKEN: No.</p> <p>24 CHAIRMAN: Thank you very much, Mr Rodgers.</p> <p>25 WITNESS: You're welcome.</p>
Page 58	Page 60
<p>1 would be wearing yellow hats on site; do you remember</p> <p>2 that?</p> <p>3 A. General labourers and/or carpenters and/or nondescript</p> <p>4 high-risk workers.</p> <p>5 Q. Yes. My earlier question was, apart from such general</p> <p>6 labourers directly employed by Leighton, did Leighton</p> <p>7 also hire general labourers as sub-contractors, ie not</p> <p>8 as direct employees?</p> <p>9 A. Yeah. China Tech wore yellow helmets, their carpenters</p> <p>10 wore yellow helmets. Tung Yat and Man Shun wore yellow</p> <p>11 helmets as a general rule. Fang Sheung wore yellow</p> <p>12 helmets as a general rule. Probably those were the</p> <p>13 major ones.</p> <p>14 Q. Did Leighton directly employ banksmen?</p> <p>15 A. Sorry?</p> <p>16 Q. Did Leighton directly employ any banksmen?</p> <p>17 A. We had some on our books directly. Most of them were in</p> <p>18 the other section, on the HHS.</p> <p>19 MR KHAW: I have no further questions. Thank you.</p> <p>20 CHAIRMAN: Thank you.</p> <p>21 MR BOULDING: We have no questions, sir.</p> <p>22 CHAIRMAN: Thank you very much.</p> <p>23 MS CHONG: I have no questions.</p> <p>24 CHAIRMAN: Thank you.</p> <p>25 MR WILKEN: I have no re-examination.</p>	<p>1 CHAIRMAN: It's very good of you to come along. I know it's</p> <p>2 an inconvenience for you and we are most indebted to</p> <p>3 you. Thank you.</p> <p>4 WITNESS: No, that's fine. I'm happy to help.</p> <p>5 CHAIRMAN: Good. We can perhaps have the morning</p> <p>6 adjournment now.</p> <p>7 MR PENNICOTT: 15 minutes?</p> <p>8 CHAIRMAN: 15 minutes, yes. Thank you.</p> <p>9 (The witness was released)</p> <p>10 (11.59 am)</p> <p>11 (A short adjournment)</p> <p>12 (12.22 pm)</p> <p>13 MR CHEUNG CHIU FUNG, JOE (on former affirmation in Punt)</p> <p>14 (All answers given via simultaneous interpreter</p> <p>15 except where otherwise specified)</p> <p>16 Cross-examination by MR SO</p> <p>17 MR SO: Good morning, Mr Cheung.</p> <p>18 A. Good morning.</p> <p>19 Q. I am Simon So. I am the counsel for China Technology.</p> <p>20 I have some questions for you. I hope you can answer in</p> <p>21 a direct manner and do it slowly so that interpretation</p> <p>22 can be made to the Commission.</p> <p>23 A. (Chinese spoken).</p> <p>24 Q. Mr Cheung, you are the foreman of Fang Sheung, and</p> <p>25 I understand you are also the most senior frontline</p>

Page 61	Page 63
<p>1 staff of Fang Sheung?</p> <p>2 A. Yes.</p> <p>3 Q. We know that Fang Sheung Construction Co Ltd was</p> <p>4 incorporated in 2016?</p> <p>5 A. Yes.</p> <p>6 Q. Shortly after it was incorporated, in September 2016,</p> <p>7 you were allotted 3,000 shares of Fang Sheung</p> <p>8 Construction Ltd?</p> <p>9 A. Yes.</p> <p>10 Q. So, in other words, you became a 30 per cent shareholder</p> <p>11 of Fang Sheung Construction Ltd?</p> <p>12 A. Yes, nominally.</p> <p>13 Q. I don't quite understand what you mean by "nominally".</p> <p>14 A. When I said "nominally", I meant that Mr Pun wanted to</p> <p>15 incorporate Fang Sheung Construction Company and my name</p> <p>16 was added to the company. That's why there were three</p> <p>17 people at the company. Mr Pun was a director.</p> <p>18 Q. Right. But would it be right if I say that you are also</p> <p>19 one of the bosses or one of the owners of Fang Sheung?</p> <p>20 A. Yes, for the company which was incorporated in 2016.</p> <p>21 Q. So, in other words, your relationship with Mr Pun was</p> <p>22 not just subordinate and superior, but you two were also</p> <p>23 business partners?</p> <p>24 A. Yes.</p> <p>25 Q. Can I bring you to the transcript of Wednesday, which is</p>	<p>1 A. For sites that needed me, I was there.</p> <p>2 Q. Mr Cheung, you said when the site needs you, you will be</p> <p>3 there. So when SCL1112 was in progress, did you in fact</p> <p>4 stay in the construction site every day?</p> <p>5 A. Yes, I was largely there every day.</p> <p>6 Q. So, on the days that you were not on the construction</p> <p>7 site, where would you be?</p> <p>8 A. I was ill, I felt unwell or I had family issues, and</p> <p>9 that was why I wasn't at the site.</p> <p>10 Q. Can I jog your memory back to when, in the course of</p> <p>11 SCL1112, do you recall taking any long holiday, say for</p> <p>12 a month or more than a month?</p> <p>13 A. I didn't take any leave spending a month or beyond.</p> <p>14 Q. And you have just mentioned to us those days like long</p> <p>15 holidays or when you were sick or had family issues,</p> <p>16 there would be definitely someone substituting your role</p> <p>17 in the construction site; correct?</p> <p>18 A. Correct.</p> <p>19 Q. So you told us just before that you have not spent</p> <p>20 a long vacation for over a month?</p> <p>21 A. Correct.</p> <p>22 Q. So can you confirm to us, in November and December 2015,</p> <p>23 were you actually working with Fang Sheung and staying</p> <p>24 on site?</p> <p>25 A. Most of the time I was at the site.</p>
Page 62	Page 64
<p>1 Day 13, page 93, line 15. That was the examination by</p> <p>2 my learned friend Mr Pennicott. In the examination of</p> <p>3 Mr Pennicott, he asked you, at line 15:</p> <p>4 "Throughout the course of the project that we're</p> <p>5 concerned with, SCL1112, where we know Fang Sheung was</p> <p>6 a sub-contractor to Leighton for the bar bending and</p> <p>7 fixing works, I think I'm right to say, am I not, that</p> <p>8 you were the most senior person on site so far as</p> <p>9 Fang Sheung is concerned?</p> <p>10 Answer: Correct."</p> <p>11 Your answer is, "Correct", and then a question</p> <p>12 follows:</p> <p>13 "And, as I understand it, Mr Cheung, you were there</p> <p>14 from day one, when Fang Sheung started their rebar work,</p> <p>15 throughout the whole period; save perhaps for periods of</p> <p>16 leave and holiday, you were there every day.</p> <p>17 Answer: You can put it this way."</p> <p>18 You remember that exchange?</p> <p>19 A. Yes, I remember.</p> <p>20 Q. So were you there every day save and except, say,</p> <p>21 weekends and long holidays?</p> <p>22 A. For sites that needed me, I was there.</p> <p>23 Q. Insofar as the construction --</p> <p>24 COMMISSIONER HANSFORD: Sorry, we need the translation.</p> <p>25 MR SO: I do apologise.</p>	<p>1 Q. Can the witness be shown bundle C9, page C6360.</p> <p>2 Mr Cheung, this is the sign-in/sign-out record of</p> <p>3 Leighton, and if you take a look at the code 2041,</p> <p>4 approaching to the end of the page, you can see your</p> <p>5 name; correct?</p> <p>6 A. Correct.</p> <p>7 Q. So that is the sign-in/sign-out record of yourself into</p> <p>8 SCL1112?</p> <p>9 MR PENNICOTT: Which month?</p> <p>10 COMMISSIONER HANSFORD: Sorry, which month are we in?</p> <p>11 MR SO: This one is in September. It is at the top of the</p> <p>12 date, where you can see "9/1". So this is the</p> <p>13 sign-in/sign-out record on September.</p> <p>14 A. Yes, I see that.</p> <p>15 Q. Can you confirm that, Mr Cheung?</p> <p>16 A. Yes.</p> <p>17 Q. Now I wish to bring you to C6379. This is the December</p> <p>18 sign-in/sign-out record. We cannot find your name on</p> <p>19 this sign-in/sign-out record. Can you tell us, if you</p> <p>20 know, what is the reason of that?</p> <p>21 A. I'm not sure about this record.</p> <p>22 Q. I see. This situation similarly occurred on page C6372.</p> <p>23 This is the November sign-in/sign-out record, and again</p> <p>24 your name was not there. Do you know the reason of it,</p> <p>25 if you know?</p>



Page 65	Page 67
<p>1 A. I don't remember. Perhaps by that time I already had 2 a vehicle and I just drove in and out of the site. 3 Q. But we can be sure that you were on the construction 4 site in November and December 2015; is that correct? 5 A. I definitely was on the site. 6 Q. Can I bring you to your witness statement, in bundle E6, 7 page E877, and the English translation is on E879.3. 8 Can I bring you to paragraphs 8(j) and 8(k). There you 9 have confirmed in your witness statement that: 10 "The head of steel bars screws for threaded steel 11 bars were not cut short. All problematic screw cups 12 would be followed up and fixed by Leighton." 13 8(k) The screws for threaded steel bars were not cut 14 short. Such condition is uncommon in the industry, and 15 also unacceptable." 16 You have adopted this witness statement as part of 17 your evidence, in your evidence-in-chief; correct? 18 A. Correct. 19 Q. So, insofar as cross-examination and 20 examination-in-chief goes that far today, are you saying 21 that paragraphs 8(j) and 8(k) are still accurate and 22 correct? 23 A. Correct. 24 Q. So, as a matter of fact on SCL1112 -- as a matter of 25 fact, not as a matter of imagination -- there was no</p>	<p>1 Q. Mr Cheung, I wish to discuss with you the incidents that 2 you were told that threaded section of the rebars were 3 being cut by Mr Edward Mok. 4 CHAIRMAN: To avoid any ambiguity, there's no suggestion 5 that the rebars were actually cut by Mr Edward Mok; 6 rather, that Mr Mok made the report. 7 MR SO: Right. I do apologise for not putting that 8 precisely. 9 Insofar as you are concerned -- maybe I will bring 10 you to Mr Edward Mok's witness statement. It is in 11 bundle C12, page C8114. Can I bring you to 12 paragraph 30. This is relating to the first incident 13 around September 2015. The witness statement of Mr Mok 14 says this, in the second sentence: 15 "I also mentioned the incident to Fang Sheung's 16 supervisor, Joe Cheung [so that's you]. I said I had 17 discovered a cut threaded rebar on site and please 18 ensure his workers checked the threaded bars were in 19 good condition and being screwed into the couplers. 20 I do not recall his exact response, but I believe it was 21 along the lines of 'Yes, I will remind my workers!'" 22 I recall you mentioned yesterday that when Mr Mok 23 told you about the third incident -- not the first, the 24 third incident -- that you feel very ashamed, angry. So 25 were you feeling shocked or angry when it was in the</p>
Page 66	Page 68
<p>1 threaded heads of the rebars were being cut; is that 2 your evidence? 3 A. Correct. 4 Q. So you have not seen any threaded heads being cut? 5 A. I have not seen any personally. 6 Q. Right. And you have not heard anybody telling you that 7 threaded heads were being cut; is that your evidence? 8 A. I have heard of the threaded heads being cut. 9 Q. But you would accept that this point was not mentioned 10 whatsoever in your Commission witness statement? 11 A. You can put it this way. 12 Q. What do you mean by "you can put it that way"? Is it 13 there or is it not there? 14 A. Not there. 15 Q. Thank you. 16 Your boss, Mr Pun, came to give evidence this 17 Tuesday. He gave a comment saying that the cutting of 18 the threadings is an insult to the industry. Do you 19 know this? 20 A. Yes, I know. 21 Q. Would you agree with this observation or this comment 22 being passed -- 23 A. Yes, I agree. 24 Q. -- as being one of the members of the profession? 25 A. I agree.</p>	<p>1 first occasion when Mr Mok told you? 2 A. For the first occasion, Mr Mok already approached staff 3 of Fang Sheung to rectify the situation, and then Mr Mok 4 told me, during the first incident -- well, I did not 5 regard the matter as serious, so it wasn't until the 6 second occasion that I became aware that some individual 7 workers took the initiative to cut the rebars to try to 8 install them. 9 Q. So your answer to us is you were not very shocked when 10 it was in the first incident? 11 A. Because Mr Mok asked our workers to fix it, and if this 12 simple problem was already fixed I didn't consider it 13 a serious problem in the construction industry. 14 I neglected the seriousness of the problem. It wasn't 15 until the second occasion when Mr Mok made it clear to 16 me that threaded sections of bars were being cut that 17 I became very shocked. 18 Q. Sorry, I don't quite understand why this would be 19 a simple problem? Isn't this an insult to the 20 profession, cutting threaded end of a rebar -- isn't it, 21 Mr Cheung? 22 A. If this problem could be fixed as soon as possible, then 23 this wouldn't be a problem, because there were problems 24 with our supervision, leading to such negligent 25 behaviour of these workers who took the initiative to</p>

Page 69	Page 71
<p>1 act.</p> <p>2 Q. So now is it your evidence that as long as it can be</p> <p>3 remedied, cutting of the threaded section of a rebar is</p> <p>4 not a problem, is not an insult?</p> <p>5 A. I don't rule this out. And as a matter of perspective,</p> <p>6 yes, it is a problem.</p> <p>7 Q. All right. So let me focus back on the conversation you</p> <p>8 had with Mr Mok. So, when Mr Mok told you about that,</p> <p>9 did you enquire with Mr Mok, "So did you actually find</p> <p>10 out who cut it?"</p> <p>11 A. I immediately instructed my workers and inspected it.</p> <p>12 I asked my workers about it, but nobody responded. That</p> <p>13 is why I gave an instruction immediately that it is</p> <p>14 a serious matter and it should not happen again in the</p> <p>15 future.</p> <p>16 Q. Pardon me. Maybe I have not put myself too clear. Let</p> <p>17 me ask it again. Did you ask back Mr Mok, "Hey, you</p> <p>18 Leighton people are here; did you find out who cut the</p> <p>19 threaded rebars?"</p> <p>20 A. I did not ask.</p> <p>21 Q. Then the next question is: did Mr Mok ask you, "Hey,</p> <p>22 Mr Cheung, you are the foreman, you are always here. Do</p> <p>23 you know who cut it?"</p> <p>24 A. Not in my recollection. I don't remember. It was</p> <p>25 a conversation and due to the lapse of time I no longer</p>	<p>1 rebars being cut. He asked me not to allow this to</p> <p>2 happen and that I should look after our workers and we</p> <p>3 should conduct the coupling works properly. This would</p> <p>4 not be tolerable, I was told.</p> <p>5 Q. Would it be fair for me to say the situation did not</p> <p>6 remedy after the first -- or did not improve after the</p> <p>7 first occasion, but it actually happened shortly after</p> <p>8 the first occasion? Would you accept that?</p> <p>9 A. I agree.</p> <p>10 Q. So in light of this, after the second occasion being</p> <p>11 reported to you, did you go and look out who actually</p> <p>12 cut the threaded rebars?</p> <p>13 A. Yes.</p> <p>14 Q. Did you find out who it is?</p> <p>15 A. I couldn't.</p> <p>16 Q. Did you ask the workers, for example, in private, "Did</p> <p>17 you see any colleagues cutting threaded rebars?"</p> <p>18 A. I briefed my workers about the second incident.</p> <p>19 Q. You, according to what I recall, also gave a briefing to</p> <p>20 the workers after the first occasion; correct?</p> <p>21 A. Yes, I did mention that. It was my negligence.</p> <p>22 Q. In the second occasion you also briefed your workers;</p> <p>23 correct?</p> <p>24 MR WILKEN: Sorry, could Mr So slow down a bit for those of</p> <p>25 us who were receiving the translation.</p>
Page 70	Page 72
<p>1 recall.</p> <p>2 Q. So let me bring you to the second occasion. That is in</p> <p>3 paragraph 32 of the witness statement:</p> <p>4 "The second occasion was around one month later in</p> <p>5 October or November."</p> <p>6 I won't trouble you to go through paragraph 32 in</p> <p>7 its entirety. I just want you to appreciate that was</p> <p>8 one month after the first incident.</p> <p>9 Can I bring you to paragraph 34:</p> <p>10 "After the inspection, I mentioned the matter to one</p> <p>11 of my supervisors (either Joe Leung or Andy Ip). I also</p> <p>12 told Joe Cheung, Fang Sheung's supervisor about the</p> <p>13 matter. I told him to ensure his workers checked the</p> <p>14 threaded bars were in good condition and being screwed</p> <p>15 into the couplers. I recall Joe Cheung being a little</p> <p>16 surprised that the same issue had arisen again, and he</p> <p>17 said he would take appropriate steps to ensure it would</p> <p>18 not happen."</p> <p>19 Regarding this incident, again, did Mr Edward Mok</p> <p>20 ask you, "Hey, Mr Cheung, who actually cut the threaded</p> <p>21 rebars?"</p> <p>22 A. No.</p> <p>23 Q. Did Edward Mok actually ask you, "You must go and find</p> <p>24 out who it is and you've got to remedy the problem"?</p> <p>25 A. Mr Mok just told me there was a second incident of</p>	<p>1 MR SO: I do apologise.</p> <p>2 A. For the second incident couplers were cut, I was</p> <p>3 shocked, and I stepped up the inspection of couplers and</p> <p>4 I assigned more workers to work on the couplers.</p> <p>5 Q. Sorry, Mr Cheung, when you said couplers were cut, do</p> <p>6 you mean threaded sections of the rebars are cut?</p> <p>7 A. The threaded parts.</p> <p>8 Q. So, regarding the first occasion, it is also the</p> <p>9 first -- it is also the threaded section of the rebars</p> <p>10 being cut?</p> <p>11 A. I only knew about it when the second incident occurred.</p> <p>12 Q. So what did you know in the first time?</p> <p>13 A. Only after the second incident I found out that</p> <p>14 a similar situation occurred for the first incident.</p> <p>15 Q. Can I bring you back to paragraph 30 of Mr Mok's witness</p> <p>16 statement. Mr Mok says:</p> <p>17 "I said I had discovered a cut threaded rebar</p> <p>18 on site and please ensure his workers checked the</p> <p>19 threaded bars were in good condition and being screwed</p> <p>20 into the couplers. I do not recall his exact response,</p> <p>21 but I believe it was along the lines of "Yes, I will</p> <p>22 remind my workers.""</p> <p>23 A. Correct.</p> <p>24 Q. So you recall you did say something to Mr Mok along the</p> <p>25 line of, "Yes, I will remind my workers"; correct?</p>

Page 73	Page 75
<p>1 A. Correct.</p> <p>2 Q. To remind them of what?</p> <p>3 A. I reminded them to conduct the coupling works properly.</p> <p>4 I asked them to screw the threaded bars properly into</p> <p>5 the couplers. So I reminded my workers to conduct the</p> <p>6 coupling works properly.</p> <p>7 Q. So you were saying Mr Mok told you it was only the</p> <p>8 Fang Sheung workers did not screw in all of the threads</p> <p>9 of the rebar into the couplers; is that your evidence?</p> <p>10 A. I think that is what he meant.</p> <p>11 Q. Mr Cheung, don't think. What did Mr Mok actually tell</p> <p>12 you?</p> <p>13 A. After the first incident, Mr Mok told me that there was</p> <p>14 an improper coupler, there was an installation issue,</p> <p>15 and he asked his workers to install it properly before</p> <p>16 informing me. Then he told me about the couplers. He</p> <p>17 said our workers should be told to complete the coupling</p> <p>18 works properly, and that the screws should be screwed in</p> <p>19 properly.</p> <p>20 Q. So are you saying that Mr Mok here lied, and he did not</p> <p>21 actually tell you a cut threaded rebar was found</p> <p>22 on site?</p> <p>23 A. At the site, there was one defective rebar and our</p> <p>24 workers were asked to fix it.</p> <p>25 CHAIRMAN: Sorry, Mr Cheung. Straight answers always help</p>	<p>1 MR SO: So maybe like this, Mr Cheung, can you tell us how</p> <p>2 did Mr Mok report the second occasion to you?</p> <p>3 A. At the site, he told me verbally.</p> <p>4 Q. Right. Can you tell us the content of the conversation;</p> <p>5 what did Mr Mok actually tell you?</p> <p>6 A. It was straightforward. There were couplers being cut.</p> <p>7 He asked me to look after my workers properly and not</p> <p>8 allow such occurrences to happen, and that we should</p> <p>9 make proper inspections.</p> <p>10 Q. That's all?</p> <p>11 A. He told me verbally so I might not necessarily remember</p> <p>12 everything.</p> <p>13 Q. So it is a short conversation?</p> <p>14 A. Yes.</p> <p>15 Q. So how did he tell you about the first occasion where</p> <p>16 the threaded rebars was cut?</p> <p>17 A. In the same manner. He relayed to me verbally that</p> <p>18 an incident happened. In other words, threaded bars</p> <p>19 were not screwed into the couplers properly but he did</p> <p>20 not mention the cut bars.</p> <p>21 MR SO: Sir, would that be a convenient moment? I am moving</p> <p>22 to another topic.</p> <p>23 CHAIRMAN: Yes. Thank you very much indeed. We will</p> <p>24 adjourn now for lunch. 2.15. Thank you.</p> <p>25 (1.00 pm)</p>
Page 74	Page 76
<p>1 I'm not suggesting you're trying to avoid the question.</p> <p>2 But did Mr Mok on this first incident, to your memory</p> <p>3 now, say to you anything concerning the fact that he had</p> <p>4 discovered that the thread of a rebar had been cut?</p> <p>5 A. No.</p> <p>6 MR SO: So Mr Mok just told you it was not properly screwed,</p> <p>7 and your evidence was that you were only notified about</p> <p>8 this in the second occasion; is that your evidence?</p> <p>9 A. Yes.</p> <p>10 Q. So, in the second occasion now I'm focusing on, Mr Mok</p> <p>11 told you, "Hey, I found another incident where threaded</p> <p>12 sections were being cut"?</p> <p>13 CHAIRMAN: I know you don't mean that to be a trick</p> <p>14 question.</p> <p>15 MR SO: I don't mean it.</p> <p>16 CHAIRMAN: But what he said is he wasn't told in respect of</p> <p>17 the first incident anything about the cutting of</p> <p>18 a rebar, so he wouldn't have said on the second</p> <p>19 incident, "Look, I've got another finding of rebar being</p> <p>20 cut."</p> <p>21 MR SO: I do apologise.</p> <p>22 CHAIRMAN: Do you see what I mean?</p> <p>23 MR SO: I see what you mean. I do apologise.</p> <p>24 CHAIRMAN: It's no problem. These questions sometimes are</p> <p>25 asked unintentionally.</p>	<p>1 (The luncheon adjournment)</p> <p>2 (2.19 pm)</p> <p>3 MR SO: Good afternoon, Mr Cheung.</p> <p>4 A. Good afternoon.</p> <p>5 Q. Just before we adjourned for the luncheon adjournment,</p> <p>6 we were discussing about the first and second occasions</p> <p>7 where Mr Edward Mok reported to you that he came to find</p> <p>8 out some threaded rebars were being cut.</p> <p>9 So you told us that on the first occasion when he</p> <p>10 reported to you, you were not told that threaded ends</p> <p>11 were cut; correct?</p> <p>12 A. Yes.</p> <p>13 Q. So it was until the second time that he reported to you</p> <p>14 that he saw threaded ends being cut that he then also</p> <p>15 told you that actually the first time it was the same</p> <p>16 situation; is it like that?</p> <p>17 A. Correct.</p> <p>18 Q. So did you ask Mr Mok, "Why did you not tell me the</p> <p>19 first time?"</p> <p>20 A. I didn't, because I was concerned about the second</p> <p>21 occasion.</p> <p>22 Q. So am I correct to put it this way: the second time, you</p> <p>23 were much more concerned than the first time?</p> <p>24 A. Yes.</p> <p>25 Q. Because obviously, not screwing the threaded rebars into</p>

Page 77	Page 79
<p>1 the coupler is a smaller thing?</p> <p>2 A. On the first occasion, I didn't know about the threaded</p> <p>3 rebar. On the second occasion, I knew about it and</p> <p>4 I was more concerned.</p> <p>5 Q. So, insofar as the first incident is concerned, you only</p> <p>6 knew that the threaded rebars were not properly or fully</p> <p>7 screwed into the couplers?</p> <p>8 A. As far as I know, that was the case.</p> <p>9 Q. And compared to cutting threaded rebars, this is</p> <p>10 definitely a less serious matter?</p> <p>11 A. Yes.</p> <p>12 Q. In the second occasion where Mr Edward Mok told you, did</p> <p>13 he mention what machine was used to cut those threaded</p> <p>14 rebars?</p> <p>15 A. No. He only told me that on the second occasion, "Your</p> <p>16 workers did not do it well. I asked your workers to</p> <p>17 make good and then workers cut the threaded rebar." He</p> <p>18 hoped that I could instruct my workers to do it properly</p> <p>19 and this will not happen again.</p> <p>20 Q. Thank you. Can I bring you to your police witness</p> <p>21 statement, please. It is in E1575, the Chinese version,</p> <p>22 and the English version is in E1584.1.</p> <p>23 Do you recall you made this police witness</p> <p>24 statement?</p> <p>25 A. I do.</p>	<p>1 have not heard of it; correct?</p> <p>2 A. Yes.</p> <p>3 CHAIRMAN: But in fact, is it not correct that you had heard</p> <p>4 of it; you had heard of it from the Leighton</p> <p>5 supervisors, in respect of your own people?</p> <p>6 A. Yes.</p> <p>7 MR SO: Mr Cheung, why did you not tell the police about the</p> <p>8 occasions that were reported to you by Mr Edward Mok?</p> <p>9 A. Because I was of the view that I were not to talk about</p> <p>10 the eight NCRs. I was asked to talk about whether there</p> <p>11 was massive cutting of rebars in the SCL project.</p> <p>12 I misunderstood the police meaning.</p> <p>13 Q. Mr Cheung, the question asked by the police was very</p> <p>14 straightforward. It was asking whether you heard or</p> <p>15 witnessed cutting of threaded rebars. It was not</p> <p>16 whether you heard or witnessed massive cutting of</p> <p>17 threaded rebars -- is it not?</p> <p>18 A. I misunderstood the police.</p> <p>19 Q. Mr Cheung, if you go to the last page of the witness</p> <p>20 statement.</p> <p>21 COMMISSIONER HANSFORD: Sorry, the witness statement?</p> <p>22 MR SO: The police witness statement. I do apologise, sir.</p> <p>23 It's page 1584.10.</p> <p>24 You were of course notified, Mr Cheung, of your</p> <p>25 right to make any changes, amendments or supplements to</p>
<p>Page 78</p> <p>1 Q. And of course what you told the police would have been</p> <p>2 the truth?</p> <p>3 A. Yes.</p> <p>4 Q. Can I bring you to page E1582, regarding question and</p> <p>5 answer number 4.</p> <p>6 Is the Chinese witness statement in front of you?</p> <p>7 A. It is.</p> <p>8 Q. The question reads like this:</p> <p>9 "When Fang Sheung was carrying out the works for SCL</p> <p>10 Hung Hom Station, did you witness or hear of anyone</p> <p>11 cutting short the threaded sections of rebars with</p> <p>12 machinery, in order to pretend that the rebars were</p> <p>13 already screwed into couplers?"</p> <p>14 And this is your answer, Mr Cheung:</p> <p>15 "I have not witnessed or heard of it."</p> <p>16 Mr Cheung, this could not be correct then; correct?</p> <p>17 A. Yes.</p> <p>18 Q. Why did you not tell the police --</p> <p>19 CHAIRMAN: Sorry, I think the answer is equivocal.</p> <p>20 COMMISSIONER HANSFORD: "Yes" to what?</p> <p>21 CHAIRMAN: Yes.</p> <p>22 MR SO: I will confirm that with the witness.</p> <p>23 Is answer 4 not correct?</p> <p>24 CHAIRMAN: Well, perhaps we could put it this way. In that</p> <p>25 answer, in the first sentence, you have said that you</p>	<p>Page 80</p> <p>1 your witness statement, but you did not.</p> <p>2 A. I didn't.</p> <p>3 Q. So are you trying to suggest that you simply realised</p> <p>4 you had misunderstood the police question just now?</p> <p>5 A. Yes.</p> <p>6 Q. May I also refer you to the Commission witness</p> <p>7 statement. That is in E2/879.1, and if you go to</p> <p>8 E879.3, at 8(j) and 8(k), are you also trying to suggest</p> <p>9 that you were just meaning that there were no massive</p> <p>10 scale of cutting of heads of steel bars, the threaded</p> <p>11 end of the head of steel bars, and the problems of</p> <p>12 screwing the couplers -- are you just referring to</p> <p>13 massive scale?</p> <p>14 A. (Chinese spoken).</p> <p>15 Q. Of course.</p> <p>16 COMMISSIONER HANSFORD: We didn't get the translation of</p> <p>17 that, I don't think.</p> <p>18 MR SO: The translation was: "Can you repeat the question?"</p> <p>19 COMMISSIONER HANSFORD: Thank you.</p> <p>20 MR SO: I do apologise, sir.</p> <p>21 Paragraph 8(j) and 8(k), Mr Cheung. When you were</p> <p>22 saying there were no cutting short of the threaded ends</p> <p>23 of the rebars, are you now saying there were no cutting</p> <p>24 whatsoever, or no cutting in a massive scale?</p> <p>25 A. I did not witness it personally.</p>

Page 81	Page 83
<p>1 Q. Can I bring you to bundle E1, page E5 --</p> <p>2 COMMISSIONER HANSFORD: I'm sorry, I don't understand the</p> <p>3 answer that was just given. "I didn't witness" what?</p> <p>4 "I did not witness it personally." "I did not witness"</p> <p>5 what personally?</p> <p>6 MR SO: Maybe I can clarify.</p> <p>7 COMMISSIONER HANSFORD: That would be helpful.</p> <p>8 MR SO: Mr Cheung, when you said you have not witnessed it</p> <p>9 personally, what was the "it" you were referring to?</p> <p>10 A. The situation was I did not personally witness it and</p> <p>11 I only saw the pictures.</p> <p>12 COMMISSIONER HANSFORD: We still have an "it".</p> <p>13 MR SO: We still don't quite understand, Mr Cheung: what</p> <p>14 situation did you actually not witness?</p> <p>15 A. That is at the time the witness situation, I did not</p> <p>16 witness that situation.</p> <p>17 Q. What situation, Mr Cheung? Do you mean cutting of the</p> <p>18 threaded rebars?</p> <p>19 A. You asked me whether it was the case that I saw people</p> <p>20 cut the threaded rebars. I was not present at the scene</p> <p>21 and I did not witness the situations you described.</p> <p>22 Q. Can I bring you to E5. Can I draw your attention to</p> <p>23 7(a). You were expressly required by the solicitors of</p> <p>24 the Commission to explain whether you have any knowledge</p> <p>25 of the defective steel bar. Why had you not told the</p>	<p>1 mentioned that the company would issue a warning letter.</p> <p>2 Q. So the words "warning letter" come from Mr Edward Mok?</p> <p>3 The term "warning letter" comes from Mr Edward Mok?</p> <p>4 A. Yes.</p> <p>5 Q. Insofar as you are aware, is this the only NCR that</p> <p>6 Fang Sheung received?</p> <p>7 A. That is correct.</p> <p>8 Q. You told us yesterday that you only received this NCR at</p> <p>9 the MTRC interview. Is that correct?</p> <p>10 A. Yes.</p> <p>11 Q. May I bring you to C44 and then C45, 46, scrolling down,</p> <p>12 and there are some photos, 47 and 48.</p> <p>13 A. I see it.</p> <p>14 Q. When you received this NCR during this MTRC interview,</p> <p>15 were these photographs also shown to you?</p> <p>16 A. Yes.</p> <p>17 Q. Were you shocked on the day when you were interviewed by</p> <p>18 seeing these photographs?</p> <p>19 A. It left a deep impression.</p> <p>20 Q. All right. Was this NCR given to you prior to you</p> <p>21 entering into the conference room or during the</p> <p>22 interview in the conference room?</p> <p>23 A. During the interview, on 13 June in the afternoon,</p> <p>24 during the interview with MTR, I was given this NCR</p> <p>25 letter.</p>
Page 82	Page 84
<p>1 Commission that you actually heard this?</p> <p>2 A. I have constraints of understanding/comprehension, so</p> <p>3 that is my neglect.</p> <p>4 Q. Mr Cheung, I have to suggest to you: you clearly</p> <p>5 understand both the request by the police and by the</p> <p>6 Commission, and you elected to avoid answering it. Is</p> <p>7 that so?</p> <p>8 A. No. No. I will not.</p> <p>9 Q. Mr Cheung, can I bring you to bundle C1, C43.</p> <p>10 Mr Cheung, according to the evidence you gave to us</p> <p>11 yesterday --</p> <p>12 A. Yes.</p> <p>13 Q. -- you have not seen this non-conformance report at the</p> <p>14 time when it was actually issued; correct?</p> <p>15 A. Correct.</p> <p>16 Q. On other occasions, you have sometimes mentioned</p> <p>17 a warning letter.</p> <p>18 A. Yes.</p> <p>19 Q. When you were talking about warning letter, according to</p> <p>20 your evidence, is it the same thing with this NCR, or is</p> <p>21 it something else?</p> <p>22 A. It is this non-conformance report, the NCR.</p> <p>23 Q. So you have not received something separate in the form</p> <p>24 of a letter that warns Fang Sheung; is that correct?</p> <p>25 A. I did not receive it. The third NCR report, Mr Mok</p>	<p>1 Q. Sorry, perhaps I am not asking the question too</p> <p>2 precisely. Let me ask it again; I do apologise. Is it</p> <p>3 before you entered into the conference room or when you</p> <p>4 were already in the conference room?</p> <p>5 A. Inside the interview room.</p> <p>6 Q. So it was during questions being asked, then they showed</p> <p>7 you this NCR; is that right?</p> <p>8 A. Yes.</p> <p>9 Q. So did you ask for some time to actually read this NCR?</p> <p>10 A. I don't read English.</p> <p>11 Q. I understand that a solicitor surnamed Fung was actually</p> <p>12 with you during the MTRC interview; correct?</p> <p>13 A. That is correct.</p> <p>14 Q. Did you ask for the assistance of this solicitor to</p> <p>15 perhaps translate to you what was inside this NCR?</p> <p>16 A. It wasn't necessary, because we were aware that this</p> <p>17 incident occurred, I was embarrassed, and why would</p> <p>18 I need to remind myself of this incident?</p> <p>19 Q. Right. This is also the third incident, according to</p> <p>20 your evidence, that Mr Mok reported to you that he</p> <p>21 witnessed the cutting of the threaded rebars?</p> <p>22 A. Yes.</p> <p>23 Q. So of course this time you would be even more furious,</p> <p>24 even more shocked; correct?</p> <p>25 A. Correct, because after the second incident I felt this</p>

Page 85	Page 87
<p>1 incident was of a grave nature and I should not neglect 2 that. 3 Q. Did you report this matter to your business partner, 4 Mr Pun? 5 A. I did inform Mr Pun. Mr Pun was also very shocked and 6 angry, and then I had to deal with it very seriously. 7 I had to reprimand my workers. I had to tell them that 8 this was a serious incident and we would have to take 9 action. 10 Q. Sorry, I have to go to perhaps some niceties of the 11 report to Mr Pun. 12 A. Yes. 13 Q. How did you tell Mr Pun about this incident? 14 CHAIRMAN: I'm sorry, I don't want to hold you back here, 15 and I'm giving as much leeway as I think is necessary. 16 At the moment, I'm just a little puzzled as to where 17 we're going on this. 18 MR SO: I believe it would be essential to know the critical 19 time and critical content that Mr Pun was being informed 20 as -- regarding this NCR, Mr Pun gave some evidence 21 regarding when and how he actually knew about it, so it 22 would be highly relevant as to -- 23 CHAIRMAN: But do we need to know going back over several 24 years, when everybody's memory is fallible? Hasn't the 25 point already been made manifestly clear: Mr Pun has one</p>	<p>1 So after that incident it was fortunate that we did not 2 have the second NCR. 3 Q. I understand that it is your evidence that you cannot 4 find out who actually cut the threaded rebars? 5 A. Correct. 6 Q. Did you seek assistance from site foremen or 7 superintendents from Leighton who were on site, whether 8 they saw anybody of Fang Sheung cutting the threaded 9 rebars? 10 A. No. 11 Q. Why not? 12 A. Because NCR came from Leighton and MTRCL, and as 13 a result they had stepped up inspection and supervision 14 of our work, so I didn't seek their assistance. 15 Q. Can I just bring you to your witness statement, 16 bundle E5, page E878, paragraph 9(c)(ii). There you 17 said: 18 "Staff of Leighton: 19 Engineering team: Andy Ip, Simon Lo, Wood Ho, 20 Mini Lo, and Patrick Chan. 21 Foremen: Mr Ip, Ming, Keung, and Wah. 22 9(e) The staff of MTR and Leighton monitor works 23 on site every day and pointed out mistakes." 24 They were there every day and you told us you were 25 eager to find out who actually cut the rebars. Why</p>
Page 86	Page 88
<p>1 version of events and this gentleman has another, as to 2 who told what to whom? 3 I'm just wondering if it takes it any further by 4 tying it down. It's not a criminal trial. 5 MR SO: I understand that, sir. I will try to be brief, 6 then I will move on. 7 CHAIRMAN: Thank you. 8 MR SO: So did you actually tell Mr Pun that threaded rebars 9 were cut? 10 A. Yes. 11 Q. Did you and Mr Pun then go together to reprimand the 12 workers? 13 A. Well, I am not sure whether Mr Pun went to reprimand the 14 workers, but I would immediately reprimand them, and on 15 this issue I did notify Mr Pun, but since it's been so 16 many years ago, it was done orally. So if you want 17 an exact recollection, I cannot give you an exact 18 replay. I did feel that this was a serious issue, so 19 I had reprimanded my workers severely, I pointed out 20 their mistakes, and I tried to identify the source of 21 the problem. But none of the workers were able to 22 answer my questions. So regarding this issue, I had to 23 strengthen my observation in the future, I had to step 24 up my inspection, and also had to assign or deploy 25 different workers. We had to inspect their workmanship.</p>	<p>1 didn't you go and ask them and see if there is any clue? 2 A. Their engineers and site supervisors were at different 3 locations, and whom could I ask? 4 Q. Then I have to ask you then, Mr Cheung, because you were 5 there. So who did you see would be regularly there in 6 the working area of Fang Sheung? 7 A. If they had seen it, they would have informed me. 8 Q. So your evidence is that you do not know who actually 9 cut it, and there was also no one from Leighton and MTR 10 reporting to you that they saw someone cutting it; 11 correct? 12 A. Correct. 13 Q. I understand that the NCR was eventually rectified; 14 correct? 15 A. Yes. 16 Q. Can I bring you to your police witness statement, 17 bundle E6, page E1583, and the English version is on 18 page 1584.9. 19 I want to focus on question and answer 8. The 20 question was: 21 "Have MTRC and Leighton ever suggested to 22 Fang Sheung that they found bar fixing works which did 23 not conform to the required standards?" 24 And the answer you gave was: 25 "My impression is that in around 2016 (cannot recall</p>

Page 89	Page 91
<p>1 the exact date), Leighton suggested to us that there 2 were rebars at the D-wall (exact position forgotten) 3 which were not screwed tightly into 5 couplers, such 4 that threads were exposed." 5 Then this is the part I want you to focus on: 6 "Leighton's foreman (I forgot who) told our 7 (Fang Sheung) workers, who rectified it immediately and 8 told me afterwards. After some time which I forgot how 9 long, Mr Pun Wai Shan told me that he received a warning 10 letter from Leighton ..." 11 So that's it. Mr Cheung, you were not there when 12 the works were actually rectified, were you? 13 A. I was not there. 14 Q. You were on the working site. Why were you not there? 15 A. The site was very big and there were other works on. 16 I would inspect each and every area. 17 Q. So, as far as you understand, the work was actually 18 rectified by Fang Sheung's worker? 19 A. Yes. Mr Mok asked our bar benders to rectify the works 20 at once. 21 CHAIRMAN: Sorry, if I could interrupt briefly. This 22 question 8 and your answer 8 that's just been considered 23 by you, I'd like to look at that for a second, if I may. 24 The question was, essentially, has it ever been 25 suggested to Fang Sheung, of which you were the foreman,</p>	<p>1 the central issue, and you're asked if there's been -- 2 "Has it ever been suggested to you that your company has 3 not put in works to the required standards?", and you 4 don't make any mention of the fact that on a number of 5 occasions it was shown to you clearly that your company 6 had in fact been guilty of cutting threads. 7 Now, my question is, do you agree that your answer 8 there was not as honest and as frank as it should have 9 been? 10 A. Yes. 11 CHAIRMAN: Thank you. 12 MR SO: Thank you very much, sir, and thank you very much, 13 Mr Cheung. 14 Can I bring you to a transcript. It is a transcript 15 of -- I don't really know the page number; it was 16 a newly added transcript -- I think bundle B. It's 17 a homemade transcript that was provided by those 18 instructing me to the Commission. 19 This was a transcript of your interview with the 20 MTRC. It is B3082.36. I'm most grateful to my learned 21 friend Mr Lam. Mr Cheung, you can trust me for the time 22 being, this is a transcript being lifted out from 23 an interview you had with MTRC on 13 June 2018. It is 24 in Cantonese, so I would be grateful if I can read it 25 out and it can be interpreted. I will do it slowly.</p>
Page 90	Page 92
<p>1 that they found bar fixing works which did not conform 2 to the required standards; right? 3 Now, cutting of rebars, it appears, quite clearly 4 did not conform to standards. Would you agree? 5 A. I do. 6 CHAIRMAN: And not screwing them in properly would also not 7 conform to standards? 8 A. Yes. 9 CHAIRMAN: But you make no mention in your answer here about 10 any threads of a coupler being cut. You must have 11 known, when you went into this interview, what the issue 12 was that was under consideration. Would you agree, 13 looking back on this statement and in particular this 14 answer, that you could have been a lot more frank and 15 honest? 16 A. Chairman, because I felt that the substandard works was 17 not properly installing the threaded bars into the 18 couplers. That was what I meant back then. 19 CHAIRMAN: All right. Let me see where we are here. When 20 you went to the police, didn't you realise that they 21 were investigating -- at the core, they were 22 investigating issues of couplers that had been cut? 23 That's what all the fuss was about. 24 A. Yes. 25 CHAIRMAN: And you go to the interview, you know that that's</p>	<p>1 The question was being asked to you by the MTR 2 staff, and the answer was your answer. This was at 3 4 minutes 38 seconds onwards: 4 "(Via interpreter) Question: When was the warning 5 letter? 6 Answer: This I have to check. 7 Question: The warning, was there anything special 8 about the warning letter? Did you know the reason for 9 issuing that warning letter? Was it in the letter? 10 Answer: The couplers were not done perfectly. They 11 had to be redone again. 12 Question: What do you mean by saying that the 13 couplers were not done perfectly? 14 Answer: That is to say perhaps they were not 15 screwed in -- tightly screwed. Perhaps those that were 16 tightly screwed were not done very well. 17 Question: That means you were -- 18 Answer: Yes. The workers didn't do it well, and so 19 supervisors of Leighton/the foremen checked and found 20 them acceptable. They were asked to make good such 21 couplers. 22 Question: Okay. Can you be more exact? What do 23 you mean by they were not properly done or done well? 24 Answer: For example, perhaps they were not fully 25 screwed.</p>

Page 93	Page 95
<p>1 Question: That is, it wasn't screwed in thoroughly?</p> <p>2 Answer: Yes, it wasn't screwed in thoroughly.</p> <p>3 Question: Did you ever discover some threads had</p> <p>4 been cut?</p> <p>5 Answer: Well, if threads were cut, if those were</p> <p>6 cut, we wouldn't do that. We would have to ask the</p> <p>7 relevant departments, for example Leighton, the</p> <p>8 inspectors, and so on. We won't do this kind of thing</p> <p>9 haphazardly.</p> <p>10 Question: No. We are talking about that particular</p> <p>11 incident, because Leighton had issued a warning letter</p> <p>12 to Fang Sheung. Then do you remember how many couplers</p> <p>13 or defective couplers were mentioned?</p> <p>14 Answer: Five. (Question: Breathing sound).</p> <p>15 Question: Five. Five. So five bars. So what were</p> <p>16 the different conditions or scenarios? What was wrong</p> <p>17 with the five bars; do you recall?</p> <p>18 Answer: It should have been that they weren't</p> <p>19 installed adequately enough, typically.</p> <p>20 Question: So post facto do you know what they did</p> <p>21 to remedy the situation?</p> <p>22 Answer: Well, then they would have to swap out the</p> <p>23 couplers and the Leighton inspectorate staff would have</p> <p>24 to monitor the situation. We had to re-install the</p> <p>25 couplers, the MTRCL would have to approve the works,</p>	<p>1 interview as you should have been?</p> <p>2 A. Yes, Chairman, because the NCR issue, I felt a little</p> <p>3 bit guilty, so I did not admit as fully as I should</p> <p>4 have.</p> <p>5 CHAIRMAN: Okay, you felt guilty; you were trying to avoid</p> <p>6 the issues. Would that be a fair summary?</p> <p>7 A. Yes.</p> <p>8 MR SO: Mr Cheung, you would fairly accept, as I have asked</p> <p>9 you earlier this afternoon, not screwing completely</p> <p>10 a threaded rebar into the coupler is a much more small</p> <p>11 incident compared to cutting of the threaded section of</p> <p>12 a rebar; correct?</p> <p>13 A. Could you repeat your question?</p> <p>14 Q. Compared to not completely screwing in the threaded</p> <p>15 section of the rebar with cutting of the threaded</p> <p>16 section of the rebar, not screwing in completely is</p> <p>17 definitely a smaller issue; correct?</p> <p>18 A. No.</p> <p>19 Q. You just mentioned that at the beginning of my</p> <p>20 cross-examination this afternoon. I can take you back</p> <p>21 to today's transcript.</p> <p>22 CHAIRMAN: I suppose, in fairness, if one examines it, the</p> <p>23 culpability or the consequence could be almost the same.</p> <p>24 I mean, if you fail to screw in a coupler properly and</p> <p>25 only do two threads, is that any different to cutting</p>
<p style="text-align: right;">Page 94</p> <p>1 then it would be okay. That was what the warning letter</p> <p>2 was about.</p> <p>3 Question: The couplers you mentioned were installed</p> <p>4 into the cement or were they screwed into the couplers</p> <p>5 lodged in the cement?</p> <p>6 Answer: It was screwed into -- it was then</p> <p>7 concreted.</p> <p>8 Question: You are referring to the bar?</p> <p>9 Answer: Yes.</p> <p>10 Question: Okay."</p> <p>11 CHAIRMAN: Sorry, is this -- again I'm belabouring it,</p> <p>12 I apologise. Is the quote going to go on much longer?</p> <p>13 MR SO: No. That is the quote.</p> <p>14 Mr Cheung, you recall that exchange you had with the</p> <p>15 MTRC staff; correct?</p> <p>16 A. I have some recollection.</p> <p>17 Q. You were asked no less than four times as to what</p> <p>18 happened about the reason of the NCR. And on all</p> <p>19 occasions you were just telling them that it was not</p> <p>20 screwed in properly; correct?</p> <p>21 A. Yes. I did not make myself clear.</p> <p>22 CHAIRMAN: Sorry, you did not make yourself clear. Let me</p> <p>23 go back to the question I put earlier, and again it's</p> <p>24 quite simple. You've had this read to you. Would you</p> <p>25 agree that you were not as frank and honest in this</p>	<p style="text-align: right;">Page 96</p> <p>1 off all the threads so that you only have two to go in?</p> <p>2 MR SO: With respect, sir, the position that we had is that</p> <p>3 cutting is definitely more serious than not completely</p> <p>4 screwing in, in terms of the culpability.</p> <p>5 CHAIRMAN: I've heard words to that effect. I'm just</p> <p>6 querying whether in fact, in practical engineering</p> <p>7 terms, it makes a difference. I'm not talking about</p> <p>8 morality here. I'm talking about practical engineering</p> <p>9 terms.</p> <p>10 MR SO: That I accept.</p> <p>11 Mr Cheung, I have to suggest to you, in the MTRC</p> <p>12 interview, the reason why you said the reason for NCR</p> <p>13 being issued to you is because -- not the threaded</p> <p>14 rebars not completely screwed into the couplers -- the</p> <p>15 whole point is not because you feel guilty. You are</p> <p>16 trying to dilute the problem. Is that so?</p> <p>17 A. It was not necessary. I did not need to dilute the</p> <p>18 problem.</p> <p>19 Since yesterday and today, what I have said in this</p> <p>20 Commission, I cannot lie. In the previous reports,</p> <p>21 there might have been some mistakes. I might have made</p> <p>22 a wrong statement. And I would also like you to help me</p> <p>23 out. It's very hard to comprehend. Could you put</p> <p>24 simple questions and I can answer them.</p> <p>25 Q. I'm sorry for being long-winded.</p>



Page 97	Page 99
<p>1 A. Thank you, yes, because I have difficulty with 2 comprehension. 3 Q. Of course. 4 Mr Cheung, you were not being frank both in the MTRC 5 interview and when you were giving the statement to the 6 police; was that so? 7 CHAIRMAN: He's already said that. 8 MR SO: All right. 9 A. I'm really confused sometimes, so pardon me. 10 Q. Mr Cheung, whilst couplers not being screwed tightly is 11 a workmanship problem -- 12 A. Yes. 13 Q. -- would you accept that cutting threads is an integrity 14 problem? "Integrity" meaning "(Chinese spoken)" not 15 "(Chinese spoken)". 16 A. It's a personal behaviour issue. The workers rely on 17 their hands, and each person, each workman, they might 18 not be able to attain 100 per cent, and the project 19 itself might only be able to reach a 95 per cent level. 20 That would still be a pass rate. 21 Q. Mr Cheung, we are not talking about completely screwing 22 into couplers. We are talking about someone going 23 forward and taking steps to cut the threaded section of 24 the rebar. That is an integrity problem, is it not? 25 A. I cannot make a difference. You should say it's</p>	<p>1 conceptually, I think in many ways, quite different to 2 this. 3 MR SO: Sure. 4 CHAIRMAN: I think he's explained the position very well, in 5 fact, as he has considered that it might be on the part 6 of his workers. 7 MR SO: So at least it would be malpractice of the workers; 8 would you accept that? 9 CHAIRMAN: I think that the professor and I can draw our 10 conclusions from the factual evidence that's given, as 11 opposed to a debate concerning jurisprudential concepts. 12 MR SO: Very well, sir. I do apologise. 13 CHAIRMAN: No, no, you don't have to apologise -- because 14 obviously each counsel is going to press the point they 15 think is best, and when we have been assisted, we will 16 say so, and when we are no longer assisted, we will say 17 so. 18 MR SO: I do apologise. Thank you very much. 19 Can I just move to another topic, Mr Cheung. 20 A. Yes. 21 Q. You were shown by Mr Pennicott, my learned friend, in 22 bundle E5, E969 to 1257. So these are documents that 23 you have appended with your witness statement to this 24 Commission. These are "Rebars processing records". Do 25 you have them in front of you?</p>
Page 98	Page 100
<p>1 a matter of the workers' integrity. A worker, if they 2 comply with the management, that is integrity. If they 3 are reckless, if they are selfish or reckless, that is 4 his own morality. 5 Q. To put it more plainly, Mr Cheung, it is not just 6 reckless, it is fraud, pretending to be screwed in, is 7 it not? 8 A. My position is they are trying to do some short-cuts, 9 they want to help out the company, but the procedures or 10 the actions that they take are mistaken. It's because 11 they don't understand that the company has other 12 problems. The problems are when they cannot attain 13 workmanship. They don't need to take that kind of risk 14 to meet with the project deadline. They should instead 15 seek out the management and clarify whether it was 16 necessary to take the threaded end and cut it, just for 17 convenience sake, to make progress in the project. 18 Q. Yes. Please continue. 19 A. (Chinese spoken). 20 CHAIRMAN: I think he's finished, in fact. 21 MR SO: Thank you. 22 As a matter of fact, you would accept that those 23 incidents being reported to you by Mr Mok are actually 24 fraudulent acts done by your workers? 25 CHAIRMAN: I'm not going to quibble -- fraud is</p>	<p>1 A. I do. 2 Q. These rebar fixing records were prepared by yourself and 3 sent to BOSA; correct? 4 A. Yes. 5 Q. So far as we understand from evidence, the process is 6 like this, is it not: Leighton will pass the drawings to 7 your boss, Mr Pun -- 8 A. Right. 9 Q. -- and Mr Pun would do some simplified drawings, and 10 those simplified drawings will indicate what type of 11 threads you would need at a particular area -- is it 12 not? 13 A. Yes. 14 Q. Then you would, in accordance with these simplified 15 diagrams, make orders as to what threaded rebars you 16 would need? 17 A. Yes. 18 Q. Can I take you to your police statement: E5/1582. 19 That's question 4 and answer 4 of the police witness 20 statement. We have visited this a couple of times 21 already, I understand. 22 In the second sentence, you said this: 23 "But in reality, sometimes there were not enough 24 rebars of type A threads. Workers might then use rebars 25 with type B threads as substitute. Perhaps workers were</p>

Page 101	Page 103
<p>1 afraid that MTRC's and Leighton's engineers would 2 misunderstand that the rebars were not fully screwed 3 into the couplers, and hence they would first cut short 4 the rebars with type B threads before screwing those 5 rebars. But I have never seen this happen before." 6 I just wish to clarify one point, Mr Cheung. 7 Regarding this answer, are you guessing the 8 possibilities that workers would do like that, or you 9 have actually seen it or heard it? 10 A. I had not seen any workers do it. 11 Q. Have you heard of it? 12 A. In my recollection, there were workers mentioning that. 13 Q. And in the context of SCL1112, did you hear that the 14 workers actually did that? 15 A. I have heard of workers mentioning that, but I have not 16 witnessed workers doing that. 17 Q. Sorry to labour this point, but I just want to be 18 absolutely clear. When you heard the workers say they 19 would do like that, is it as a matter of general 20 practice or is it in this SCL1112 they had done that 21 before? 22 A. Yesterday, another counsel asked me about this issue. 23 Most of the threaded bars there were type A. For EW 24 track, there would be about 5 to 10 per cent of the 25 rebars being type B.</p>	<p>1 A. Yes, Chairman, that's what I meant, you are correct. 2 Q. Can I just take you to the Chinese transcript of the 3 MTRC interview. It is in page B3082.27. I understand 4 that the English is just a summary. I'm not quite sure 5 whether this part was actually transcribed word by word, 6 for English. 7 I'm going at the middle. Do you have the Chinese 8 version in front of you? 9 A. I do. 10 Q. Starting from the middle, in the question part, the 11 question was this: 12 "(Via interpreter) Okay. Long or short threads, 13 they have to be done, right? They have to be cut, 14 right?" 15 CHAIRMAN: Sorry, the interpreter has to stay up with you. 16 Could we start again, because perhaps I have it wrongly 17 but it's a little muddled. 18 MR SO: Of course. 19 "(Via interpreter) Question: Okay. Long and short 20 threads have actually to be done, right? They have to 21 be cut, right? 22 Answer: Depends on what needs to be done. Long and 23 short threads. 24 Question: For example, if there wasn't enough short 25 threads and only long threads were around, then we would</p>
Page 102	Page 104
<p>1 Q. But still the question remains: did it actually happen? 2 A. I had not seen it happening. 3 Q. All right. So if you actually -- if there was not 4 enough type A threads, why did you not tell the workers, 5 "Hey, come on, just wait, wait for BOSA to deliver us 6 with some thread A"?" 7 A. Correct. 8 Q. Then why do they need to cut type B threads and use that 9 as type A? 10 A. I only heard such things from workers. I had not 11 witnessed workers converting type B to A threads, for 12 screwing into couplers. 13 Q. So you are saying that this didn't happen in SCL1112? 14 MR PENNICOTT: He didn't see it. 15 CHAIRMAN: I think what he's saying, and he's not prepared 16 to go further, and he's been clear on this, is that he's 17 heard people, his workers, talking about this happening. 18 He's never seen it happen himself, and he can't really 19 take the matter any further than that. Whether they 20 were talking about events that they had participated in, 21 he's not able to say. 22 MR SO: Right. 23 CHAIRMAN: I hope I haven't distorted what he has said, but 24 that seems to be the gist of what he has said. 25 MR SO: You did it, sir.</p>	<p>1 cut the long threads so that they could be screwed into 2 the couplers. Was it necessary? 3 Answer: Yes. When there weren't enough rebars, 4 that would be done. But -- 5 Question: So, therefore, that had been done? 6 Answer: Yes, yes, would inform us." 7 Pausing there. Mr Cheung -- 8 COMMISSIONER HANSFORD: Sorry, have I got something missing? 9 It says, "Yes, yes, would inform us." Is there a word 10 missing? 11 MR SO: That is the Chinese transcript too. It ends like 12 that. 13 COMMISSIONER HANSFORD: Thank you. 14 MR SO: Mr Cheung, here you don't seem to just have heard 15 it, you've not heard it from the workers. You actually 16 know about it; right? 17 A. No. No. That was not what I meant. 18 Q. In your police witness statement, you also said, "In 19 reality this would happen". 20 A. That was my interview with the MTRCL, we were in 21 conversation what would happen should that scenario 22 arose, and I said if type A threads were not enough, if 23 we had type B threads around, that would happen. But if 24 that happened, we had to ask Leighton first, before that 25 could be done.</p>

Page 105	Page 107
<p>1 Q. Can I bring you to the next page of the Chinese 2 transcript. There are only four exchanges. The 3 question is this: 4 "In one bay there would at most be a dozen or so? 5 Answer: Yes. In my recollection, it would be 6 a dozen or so. 7 Question: That is, it had to be converted that way 8 in order to complete the cage? 9 Answer: Yes. A dozen or so." 10 Mr Cheung, had you no knowledge about this and you 11 just heard it being muttered by the workers, you would 12 not have been able to tell there were at most a dozen or 13 so threaded rebars in each bay? 14 MR BOULDING: Sir, I hesitate to interrupt, but I'm told by 15 my learned junior, who understands Chinese, that 16 immediately before the passage that my learned friend 17 has read out, there's 15 seconds or so of the transcript 18 missing, as a result of which he says, and I tend to 19 agree, we don't understand the context of the questions. 20 Sorry to interrupt but I hope that's of assistance. 21 CHAIRMAN: No, that is. Thank you. 22 MR SO: Mr Chairman, I have myself heard the audio in 23 itself, but of course that is not transcribed out, so 24 I really can't assist, if I can in any way do. 25 CHAIRMAN: I think it's very important for a witness, when</p>	<p>1 (A short adjournment) 2 (3.57 pm) 3 MR SO: Sir, I do apologise for the delay and I am most 4 grateful for the indulgence. 5 CHAIRMAN: Yes. 6 MR SO: Mr Cheung -- 7 A. Yes. 8 Q. -- before we broke, we were talking about the Chinese 9 transcript. There, you were asked about how many bars 10 were involved in each bay, and my learned friend 11 Mr Boulding has pointed out that there were 15 seconds 12 not transcribed. 13 I would like to read you that 15 seconds, to give 14 you the context. 15 Sir, I understand that this is already confirmed 16 with the Commission -- 17 CHAIRMAN: Yes. 18 MR SO: -- that this is the part of the transcript. 19 Immediately after that page that was already 20 transcribed, the question was: 21 "Question: In my recollection or in your 22 recollection, roughly how much would be needed of each 23 slab? 24 Answer: Very minimal. How come it's so minimal? 25 Because when you were working, you could not have</p>
<p>1 that witness is being questioned as to a verbal exchange 2 that is part of a flowing conversation, that the 3 particular identified exchange be put into context. 4 MR SO: I agree. 5 CHAIRMAN: Because it's so easy for the answers then to be 6 taken out of context and misinterpreted. 7 MR SO: In that case, sir, would it be appropriate for us to 8 have a short adjournment so that the part can be given 9 in context to -- as I know -- 10 CHAIRMAN: It's 3.30 now, so we normally have ten minutes. 11 Is that going to be of any assistance to you? 12 MR SO: I can arrange for those instructing me to get the 13 electronic transcribed version to be given to the 14 solicitors for the Commission immediately. 15 CHAIRMAN: All right. Then we will see. I'm really not 16 trying to stop you or cut you down, but it is a question 17 of driving on with this matter, not leaving behind 18 matters of relevance or importance, and much of what has 19 happened this afternoon has been of benefit, and thank 20 you. 21 MR SO: Thank you. 22 CHAIRMAN: All right. But it's a matter of control, that's 23 all. 24 MR SO: I understand. Thank you. 25 (3.30 pm)</p>	<p>1 A threads in time and you were in a hurry, so you had to 2 use type B threads. But that was not common, that was 3 not commonly seen. 4 Question: In your impression -- take, for example, 5 the number of threaded bars -- what is the largest 6 number? For instance, out of 100, how many of them 7 would it be? 8 Answer: Well, the figure was very minimal. 9 Question: A few? Ten-plus? 10 Answer: In my recollection, there were some 11 ten-plus involved, ten-plus bars involved. 12 Question ..." 13 And that is exactly the question and answer that 14 I have already read out. 15 CHAIRMAN: Okay. In English, I confess it obviously helps, 16 but I don't know -- there seems to be some ambiguity: 17 "Answer: Very minimal. How come it's so minimal?" 18 And then I think the answer is -- sorry, I have to 19 go back up again; I do apologise. 20 COMMISSIONER HANSFORD: I think the answer is just over 21 10 per cent. 22 MR SO: Yes, exactly. 23 COMMISSIONER HANSFORD: And presumably the 10 per cent is 24 just over -- well, what is it? Just over 10 per cent of 25 what?</p>

<p>Page 109</p> <p>1 MR PENNICOTT: Of what, that's the problem. 2 COMMISSIONER HANSFORD: I'm not clear but I'd have to read 3 the whole thing. 4 MR SO: If we read the whole thing, the context that it is 5 discussing is about turning B threads to A threads. 6 That's the thing. 7 COMMISSIONER HANSFORD: So that answer is that just over 8 10 per cent of threaded bars -- 9 MR SO: Of B type being turned into A type, with those 10 sections being cut off. 11 CHAIRMAN: Well, is it? That's the thing. 12 COMMISSIONER HANSFORD: I don't know. 13 CHAIRMAN: Sorry, please forgive me. Perhaps we could try 14 to clarify it, because I didn't necessarily read it that 15 way. 16 MR SO: I understand. I will clarify with the witness. 17 COMMISSIONER HANSFORD: Yes, I'd like to know: just over 18 10 per cent of what? 19 MR SO: Mr Cheung, maybe you can assist the Commission. You 20 are here -- it's apparently saying there were 21 10 per cent of the threaded rebars being involved. 22 The question that the Commissioners are apparently 23 concerned with is 10 per cent of what? Can you explain 24 to us what this 10 per cent represents? 25 A. First of all, you should ask me the question what</p>	<p>Page 111</p> <p>1 MR PENNICOTT: That's three of us. 2 A. Well, if we have a coupler, and we don't have sufficient 3 type A threaded bars, would it be possible to use B type 4 threads and attach? That is the question. 5 COMMISSIONER HANSFORD: Is your answer that for around 6 10 per cent of connections you used type B bars instead 7 of type A bars? I don't think that's what you're 8 telling us, is it? That's not what you're telling us, 9 is it? 10 A. (Shook head). 11 COMMISSIONER HANSFORD: In that case, I still don't 12 understand, I'm sorry. 13 A. It might have been the case that only ten bars. 14 COMMISSIONER HANSFORD: Only ten bars in your 640 or 15 something, whatever it was, only ten bars may have been 16 type Bs instead of type A; is that what you're telling 17 me? 18 A. That is correct. 19 CHAIRMAN: So that's a different issue to cutting of type B 20 threads? 21 A. That is correct. 22 MR SO: But you were referring exactly to cutting of 23 thread B immediately before this. 24 Can I bring you to the transcript. B3082.27 is the 25 Chinese version.</p>
<p>Page 110</p> <p>1 ten-plus bars are we talking about, and then we talk 2 about the 10 per cent. Here, in the Independent 3 Commission, we had a discussion that is very clear to 4 me. They asked me if at the construction site, if we 5 didn't have sufficient type A couplers, would we use 6 type B couplers; and when the A threads are missing, 7 will we be using the B threads instead and install it 8 into the coupler? Then this incident, was it very 9 frequent? Very infrequent. And the question was how 10 many times would it occur? In one bay maybe there would 11 be ten bars, in one bay there is 16 metres and the 12 spacing is 100mm, and if their coupler ratios are in one 13 bay, we have 640 couplers. Then I told them, in my 14 recollection, then we would have ten bars. 15 It was that sentence that was my intention at the 16 time. 17 Q. And those ten threaded rebars, I put it to you, were 18 that B threads were being cut to become thread A. 19 A. Incorrect. Wrong. If the coupler -- if on one end it 20 was already attached and the other end will only have 21 half the threads, it would be a normal A type. But if 22 you allow the B thread to attach, if that were to be 23 acceptable -- professor, do you follow? 24 COMMISSIONER HANSFORD: I'm afraid I do not follow, no. 25 CHAIRMAN: Nor do I.</p>	<p>Page 112</p> <p>1 A. Okay. Let me repeat. We heard some workers say that if 2 they didn't have sufficient type A threaded bars, they 3 might use type B threaded bars and cut the bar short to 4 make it look like a type A and install it. But we did 5 not witness it personally. It was just workers 6 discussing amongst themselves. 7 Q. So is it also the staff who told you that it involves 8 around ten threaded rebars in a bay? 9 MR WILKEN: Sir, that is an unfair question, because it 10 doesn't actually match the answer that was given. He's 11 now trying to fuse the insertion of type B into type A 12 with the cutting of type B, and that's not fair. 13 CHAIRMAN: Yes. 14 MR SO: Mr Cheung, can you just read 3082.27. The question 15 that you were asked -- I have already read it, but for 16 the benefit of you I will read it again, that question. 17 The question was this: 18 "(Via interpreter) Okay. We have long and short 19 threaded bars, and it is necessary to use both types. 20 Is it necessary to cut them?" 21 (In English) Your answer: 22 "(Via interpreter) Well, it depends on what works 23 are being conducted. They would use long and short 24 threads." 25 Was this what you heard from the workers?</p>

Page 113	Page 115
<p>1 A. Yes.</p> <p>2 Q. And this was the discussion ongoing until the end of</p> <p>3 this box in page 3082.28, in this same box, where you</p> <p>4 talk about that ten threaded rebars. Can you tell me:</p> <p>5 how do you come about this number of approximately ten</p> <p>6 threaded rebars in a bay?</p> <p>7 A. That was a question asked by MTRCL, and if these</p> <p>8 situations occurred --</p> <p>9 Q. Just pause there. When you say "this situation", what</p> <p>10 situation are you referring to?</p> <p>11 MR BOULDING: He said "question".</p> <p>12 A. If we don't have sufficient type A threads and if there</p> <p>13 are B threads lying around.</p> <p>14 MR SO: So you are not referring to thread B being cut?</p> <p>15 A. This passage does not refer to cutting the threaded</p> <p>16 bars. This passage was discussing the existence of</p> <p>17 type A bars and type B bars.</p> <p>18 Q. I will put it to you that you meant exactly cutting.</p> <p>19 You can disagree if you want to.</p> <p>20 A. Okay.</p> <p>21 Q. Can I bring you to page E874. This is the list of</p> <p>22 working team of Fang Sheung; correct?</p> <p>23 A. Yes.</p> <p>24 Q. You told us you heard that from the workers sometimes</p> <p>25 there would be -- although you did not see, of course --</p>	<p>1 Q. I will move to another topic, Mr Cheung. Do you recall</p> <p>2 yesterday that my learned friend Mr Pennicott asked you</p> <p>3 about a situation where sometimes there would be</p> <p>4 deformed couplers where threaded rebars could not be</p> <p>5 installed? Do you recall that?</p> <p>6 A. I think those have been the issues all along.</p> <p>7 Q. You told us that Leighton people would then tell you</p> <p>8 that they would put in dowels inside the diaphragm wall,</p> <p>9 and then this process was commonly said to be</p> <p>10 (Chinese spoken); correct?</p> <p>11 A. Let me put it once again. If Leighton had a</p> <p>12 rectification measure, if they had cored a hole and had</p> <p>13 a dowel bar, and if our workers were there, they might</p> <p>14 ask our workers to cut the threaded part and then</p> <p>15 install a damaged coupler.</p> <p>16 Q. I recall you also told us that is for cosmetic reasons;</p> <p>17 correct?</p> <p>18 A. Yes. Now I omitted for cosmetic reason. Yes, it would</p> <p>19 look better.</p> <p>20 Q. I'm not criticising you, Mr Cheung. Don't be worried.</p> <p>21 A. No, no, no. Yes, I find it hard but it doesn't matter.</p> <p>22 I try to assist the Commission.</p> <p>23 Q. Mr Cheung, why would one spend, as you told us -- it</p> <p>24 would be quite troublesome to cut the threaded end of</p> <p>25 a rebar, so why would you cause all the troubles to cut</p>
Page 114	Page 116
<p>1 some thread B would be cut to become thread A; right?</p> <p>2 A. If that was a possibility.</p> <p>3 Q. I don't quite understand what you mean, "If that was</p> <p>4 a possibility"?</p> <p>5 A. I repeat, because these construction sites, we conduct</p> <p>6 oral discussions. The workers, they will discuss. If</p> <p>7 they don't have type A, they will use type B and cut it</p> <p>8 so it becomes type A. That is very typical. And</p> <p>9 I heard the workers say that.</p> <p>10 Q. In your view, is this acceptable?</p> <p>11 A. I chuckled a bit after I heard it. Of course it's not</p> <p>12 acceptable, because why would I waste time to cut</p> <p>13 a threaded bar? Why should I do that? It's not</p> <p>14 possible. We can wait for a delivery of new bars or we</p> <p>15 could even inform Leighton foremen to deliver couplers</p> <p>16 for us to install. Why would we be so stupid to -- why</p> <p>17 would we waste time -- why would we want to cut</p> <p>18 couplers? I also said my position, this is not allowed.</p> <p>19 Q. So did you immediately scold that worker and say, "This</p> <p>20 is not acceptable"?</p> <p>21 A. Well, you allow people to speak their mind, but when we</p> <p>22 do our work we do mention these requirements.</p> <p>23 Q. Help us, can you, Mr Cheung: do you recall who on this</p> <p>24 list actually told you this?</p> <p>25 A. I cannot recall. I cannot recall what I said yesterday.</p>	<p>1 the threaded ends for cosmetic reasons?</p> <p>2 A. I never said that threaded ends should be cut for</p> <p>3 cosmetic reason.</p> <p>4 Q. You said that it would be unsightly if there were</p> <p>5 a vacant coupler left there, although it is a deformed</p> <p>6 coupler; correct?</p> <p>7 A. Yes.</p> <p>8 Q. And you would like to put something in it, just to make</p> <p>9 it more sightly?</p> <p>10 A. That was not what I did and it was not my opinion.</p> <p>11 I have also said that my workers would take</p> <p>12 rectification measures under the instruction of Leighton</p> <p>13 to rectify the damaged couplers. They would ask our</p> <p>14 workers to do that.</p> <p>15 Q. So it was not our opinion?</p> <p>16 A. Certainly not my opinion.</p> <p>17 Q. Can I bring you --</p> <p>18 COMMISSIONER HANSFORD: Sorry, you are going too fast. We</p> <p>19 are not getting the answers.</p> <p>20 MR SO: I really do apologise.</p> <p>21 CHAIRMAN: We covered this reasonably extensively yesterday</p> <p>22 and I don't intend to stop you, but sometimes it's a bit</p> <p>23 like 100 people walking down the same pathway. It turns</p> <p>24 from a firm surface into mud.</p> <p>25 MR SO: I'm sorry.</p>

Page 117	Page 119
<p>1 CHAIRMAN: I really don't mean -- that's not a criticism, 2 it's just that sometimes it obfuscates matters, you 3 know. 4 MR SO: I see. 5 CHAIRMAN: Obviously if there's a particular point you're 6 going to, then you must go there. 7 MR SO: Yes. 8 I just want to clarify your answer yesterday, 9 because, pardon me if I'm not being smart enough, 10 I don't quite understand. 11 Can I bring you to the transcript of Day 14, 12 page 106, line 11. You were asked by my learned friend 13 Mr Pennicott: 14 "Why, in those circumstances, would there be any 15 need to cut the thread, or to cut the bar at all?" 16 And your answer: 17 "Because I feel that if the hole is vacant or is 18 empty, then a bar should be inserted into it ..." 19 I just skip to line 21, this is also your reply: 20 "Because -- this is my personal view -- that the 21 hole, Leighton might not be able to drill another hole 22 and they might have to do it above and then insert 23 another dowel. So it's possible that if they approve it 24 and if they allow that remedial procedure, and if it was 25 feasible, then Leighton could instruct our workers to</p>	<p>1 (4.23 pm) 2 (A short adjournment) 3 (4.31 pm) 4 CHAIRMAN: Thank you very much. 5 The reason why I asked Mr Pennicott, who is counsel 6 for the Commission, to just step back is that both 7 Prof Hansford and I are a little troubled at this moment 8 in time. We seem to have covered this issue extensively 9 yesterday. It was, I think, dealt with in reasonably 10 plain language at one stage in the day, and we had 11 an understanding with Mr Cheung as to his position. 12 Mr Cheung, like a number of other witnesses, has 13 been questioned a good deal, and I think he said 14 a little earlier that he couldn't remember what he said 15 yesterday let alone today. We are concerned that what 16 had attained a degree of clarity yesterday, for the sake 17 of the Commission of Inquiry, in the public interest, 18 was becoming obfuscated and confused. 19 So unless you feel that you're wishing to make some 20 new or novel point on this issue, I don't know that we 21 can be assisted by further going over this particular 22 issue. 23 MR SO: Sure, sir. Regarding the dowel points, I am just 24 putting to the witness something we heard this morning. 25 That's the only matter I would like to deal with.</p>
Page 118	Page 120
<p>1 cut the bar ..." 2 I don't quite understand, because the answer you 3 just gave us now, it was not your personal view; it was 4 Leighton's people instructing you to do that. So is it 5 now your personal view, or whether Leighton people 6 actually instructed you to do that? 7 A. First, if Leighton people had a rectification measure to 8 core hole, to insert a dowel bar, they could ask our 9 workers to cut the coupler and install another coupler 10 to the bar. But I have not seen this. 11 Q. Have you heard of them? 12 A. No, I have not heard that. Yesterday, it was discussed, 13 and in the transcript said that it's my personal 14 opinion. Because if the damaged coupler has its hole 15 vacant and if a rectification measure has been done by 16 Leighton -- now, it's my personal opinion that since the 17 coupler could not be screwed in, then we should install 18 it as far as possible. That's my personal opinion. 19 Q. So you have not seen, have not heard, and it did not 20 happen? 21 A. I have not seen cutting of a coupler. Coring of holes 22 and inserting a dowel bar, that really had happened. 23 Q. Can I bring you to page -- 24 CHAIRMAN: Sorry, can we just have a couple of minutes? Can 25 I just see Mr Pennicott a second? Thank you very much.</p>	<p>1 That's all. 2 CHAIRMAN: And that is? 3 MR SO: That there were no dowel being planted in SCL1112. 4 CHAIRMAN: I think that's a pertinent and a discrete point 5 and I have no difficulty with you putting that to him. 6 All right. 7 I do wish to emphasise, I'm not here to stop you. 8 I like to think I've given all counsel reasonable 9 leeway. It's just that if we've already covered 10 a particular point at some length and a number of 11 counsel have been involved in that and we seem to have 12 reached a consensus with the witness as to what the gist 13 of his evidence really is, then to revisit it later may 14 often be counter-productive -- 15 MR SO: I entirely understand. 16 CHAIRMAN: -- to coming to clear and understandable 17 positions, in the public interest. 18 MR SO: I entirely understand, sir. I do apologise if I -- 19 CHAIRMAN: You don't have to apologise at all. 20 MR SO: -- have been troubling or muddying up the water. 21 CHAIRMAN: Not necessarily, and you have your job to do and 22 I'm not for one moment trying to stop you from doing it, 23 but this is not, for example, a criminal trial where 24 I may say we've got different issues at stake. This is 25 a commission of inquiry where we're looking to the</p>

Page 121	Page 123
<p>1 public interests, not the interests of any one 2 particular person at any one particular time, although, 3 that said, one is always seeking to protect the 4 interests of everybody. 5 MR SO: I am most grateful, sir. 6 CHAIRMAN: Good. So the one question is fine. 7 MR SO: I think I will be -- 10 to 15 minutes I will end my 8 cross-examination. 9 CHAIRMAN: Thank you. 10 MR SO: Mr Cheung, if I were to put to you that there was 11 never planting of dowels in this SCL1112 project, would 12 you agree or disagree? 13 A. I disagree. 14 Q. So your evidence is it did occur? It did occur? 15 A. There was the use of dowels. 16 Q. Can I just bring you to the bit of my cross-examination. 17 It's in bundle B1/B36. 18 Did you have an opportunity of reading this 19 paragraph of the MTR report? 20 A. No. 21 Q. All right. Do you want to have a read of it or do you 22 prefer it to be interpreted to you? 23 MR PENNICOTT: He said he couldn't read English, so it's 24 pretty obvious. 25 MR SO: All right, I'll read it.</p>	<p>1 statement that you have just mentioned was never 2 mentioned to the police in the police statement; 3 correct? 4 MR WILKEN: Sir, I'm slightly confused, because I think this 5 is an MTR precis of the transcripts of the interview 6 that we've just spent a day trawling over. I think it 7 is. 8 MR SO: Mr Cheung, did you tell the police that Leighton 9 sometimes would ask you to cut the threaded ends and put 10 there with the understanding that Leighton would make 11 remedial works? 12 A. If I remember correctly, in the police statement, I said 13 that if Leighton had done all the remedial works, they 14 could instruct our workers to cut the coupler and fill 15 up the hole. I do recall saying that. 16 Q. I would suggest to you that you didn't, Mr Cheung. 17 Would you agree or disagree? Or do you want your police 18 witness statement? It's in E1575. 19 CHAIRMAN: Sorry, again, I'm not sure where we're going here 20 with this. Are you saying that Mr Cheung has never said 21 that there were occasions when -- 22 MR SO: His workers would cut the threads on the 23 understanding that Leighton would have remedial works 24 done. My question was this was not given in the police 25 witness statement.</p>
<p>Page 122</p> <p>1 A. I would need the translation. 2 Q. Thank you. 3 "Interviews were held on 13 June with two 4 representatives from Fang Sheung. They confirmed their 5 steel fixing works were carried out in accordance with 6 Leighton's and MTRCL's procedures. During their course 7 of work, they might encounter difficulties in fixing the 8 threaded steel bars into the couplers. In such 9 circumstances, they would raise the difficulties with 10 Leighton and request Leighton to resolve the issue." 11 This is the part I wish you to focus on: 12 "On some occasions and as requested by Leighton, 13 they would carry out cutting of threaded steel bars to 14 meet the required threaded length. On other occasions 15 and as requested by Leighton, the threaded steel bars 16 could be cut and screwed into the couplers with the 17 understanding that rectification measures would be 18 carried out by Leighton." 19 Would you agree that this is the fact that you 20 actually encountered on the site? 21 A. This is not a fact that occurred on the construction 22 site. I was describing the remedial works and then 23 Leighton could instruct our workers to cut the coupler 24 and fill up the hole. 25 Q. You would fairly accept, wouldn't you, that this</p>	<p>Page 124</p> <p>1 CHAIRMAN: No, it may not have been given in the police 2 statement, but he seems to have said it before this 3 Commission. 4 MR SO: Yes, I understand that. That's what I'm trying to 5 tell him, that he did not tell the police, and whether 6 he accepts. He says he did tell the police. That's the 7 point that I'm trying to clarify. 8 CHAIRMAN: I'm just wondering, are you trying to get to 9 a position where you will address this Commission on the 10 basis that this never happened, or that it did happen? 11 MR SO: Of course I will reserve it to the submission stage 12 but of course I would say there was a change of evidence 13 and change of position from time to time of this 14 witness. 15 CHAIRMAN: I see. Thank you very much. 16 MR SO: This was not mentioned in the police statement? 17 A. Can I read my police statement again? 18 CHAIRMAN: Isn't this a matter, with respect, that you can 19 bring to our attention, if you wish to do so, and at 20 that time, in the address -- 21 MR SO: I'm just trying to get him to agree that he did not 22 put it in the police statement, because he insists that 23 he did, that's the problem. 24 CHAIRMAN: No, in fairness, he seems to be saying, "I may 25 have done and I'd like the ability to be able to check."</p>

Page 125	Page 127
<p>1 MR SO: All right. Perhaps I will just put to him and leave 2 it to re-examination if he did not. 3 CHAIRMAN: Okay. 4 MR SO: Mr Cheung, I suggest to you -- you can disagree -- 5 you did not give this -- 6 MR SHIEH: Mr Chairman, we have actually sat for some time 7 observing different lines of cross-examination and we 8 have actually held back for some time before making any 9 intervention. 10 But it seems that we have reached a time when -- 11 obviously Mr Chairman may have actually taken a similar 12 view and that is why the brief pause just now -- in our 13 respectful submission, there is a distinction between 14 what can legitimately be probed and tested by counsel 15 for the Commission conducting the Inquiry by posing 16 questions on behalf of the Chairman and the 17 Commissioner -- he can test it and probe it -- but in 18 relation to the concerned parties who are here, because 19 potentially they are under criticism, their role would 20 be rather different, and if a party has a certain 21 factual position to put which is contrary to what 22 a witness had said, then that party can by all means put 23 it or suggest it. 24 But, in our respectful submission, it is really not 25 for a concerned party to suddenly become second counsel</p>	<p>1 questioning are being conducted on this basis, resulting 2 in the vice that Mr Chairman wisely pointed out just 3 now, then I believe it is time for us as a concerned 4 party to raise such a concern. 5 CHAIRMAN: All right. Thank you. 6 MR SO: Sir, in that case, I have no further questions. 7 Thank you. 8 CHAIRMAN: Just before you sit down, I don't want there to 9 be any form of misinformed criticism of proceedings in 10 the public interest. One of the reasons why I have been 11 somewhat more -- I don't want to say "charitable" -- 12 COMMISSIONER HANSFORD: Flexible? 13 CHAIRMAN: -- somewhat more easy going about it is that 14 I fully appreciate, without any flippancy at all, that 15 the person who instructs you has himself a very rooted 16 position in this matter and has himself been subject to 17 fairly extensive cross-examination. 18 But that doesn't, as Mr Paul Shieh has said, enable 19 him to become, so to speak, a prosecutor of everybody 20 else. It is still a public inquiry, and insofar as you 21 are able to assist that public inquiry by bringing 22 pertinent matters to the fore, that is welcome. Do you 23 understand me? 24 MR SO: I entirely understand. 25 CHAIRMAN: So I don't want you to now say, "All right,</p>
<p>Page 126</p> <p>1 to the Commission and start having a roving inquiry as 2 to what has been called a changing position on the part 3 of a witness. There's got to be a delimitation, because 4 otherwise we are going to have six or seven lines of 5 questioning from six or seven purported substitute 6 counsel for the Commission, and at the end of the day we 7 will actually issue a fee note to Lo &amp; Lo by doing that, 8 or the government will ring us up and say, "Thank you 9 very much for multiplying the kind of questions that can 10 legitimately be put." 11 Therefore I entirely echo what Mr Chairman mentioned 12 earlier. If there is a particular proposition that one 13 wants to put, one can either prompt Mr Pennicott as 14 counsel for the Commission to test it or to probe it, or 15 when one actually seeks leave to cross-examine, he or 16 she can actually say, "I want to test this witness on 17 the following areas". But what we can't have, in our 18 submission, is for a party to really say just now -- and 19 the transcript speaks for itself -- "I will reserve my 20 position until the closing, but what I want now to show 21 is the changing position" -- that is, in our submission, 22 not quite acceptable. 23 I can very well see that the Commission, as 24 Mr Chairman pointed out, giving some kind of leeway at 25 the initial stages, but if we now see that lines of</p>	<p>Page 128</p> <p>1 because there's been an objection I'm going to stop." 2 MR SO: I entirely understand. 3 CHAIRMAN: Lawyers are objected to all the time in our 4 jurisdictions, in the common law. That's part of the 5 system. And if you feel you have other matters that you 6 wish to pursue and that they are new, and that they are 7 going to assist us, then you must obviously proceed. 8 MR SO: Of course, sir. I am entirely grateful for granting 9 me those leeways in cross-examination. I have no 10 further questions. 11 CHAIRMAN: Good. Thank you very much. 12 We are now at quarter to five. I think, in fairness 13 to this witness -- he has been examined for some time -- 14 we are now Friday afternoon and I really wonder if we 15 may not be better served by adjourning the matter now 16 until Monday morning. 17 Mr Khaw, your view? 18 MR KHAW: Mr Chairman, I initially wished that I could take 19 some credit for giving everyone an early start to 20 a happy weekend, and now certainly I do not want to be 21 held liable for detaining everyone on a Friday 22 afternoon. So I will abide by the Chairman's direction. 23 I am happy to start on Monday. 24 CHAIRMAN: Thank you very much. 25 MR PENNICOTT: Sir, can I just mention, since we have just</p>



Page 129	Page 131
<p>1 mentioned Monday, there is, just to let everybody know,                  2 a further provisional timetable which has been approved,                  3 I understand, by yourself.                  4 CHAIRMAN: Yes.                  5 MR PENNICOTT: It has not yet gone onto the website but that                  6 will happen either this evening or tomorrow. Probably                  7 tomorrow. But just to let everybody know that that is                  8 the case and they should take a careful look at the                  9 revised provisional timetable.                  10 When we have completed Mr Cheung's                  11 cross-examination, we will then switch back, as it were,                  12 to further Leighton witnesses, and at Leighton's request                  13 Mr Karl Speed will be the next Leighton witness. Then                  14 there will be Mr Law, Mr Ho, Ms Emily Cho.                  15 Then, sir, just so that everybody is not taken by                  16 surprise, we have had a further witness from China                  17 Technology, a Mr Ngai Chun Kit, and he will follow                  18 Mr Emily Cho. There are good reasons for that, because                  19 they deal with similar subject matters regarding the                  20 Leighton sign-in/sign-out records. Just to let                  21 everybody know that that is the case and they should pay                  22 close attention to the new provisional timetable, when                  23 it is published.                  24 CHAIRMAN: Thank you.                  25 Mr Cheung, we are going to finish now until Monday</p>	<p>1 INDEX                  2 PAGE                  3 MR KHYLE ANTHONY RODGERS (sworn) .....1                  4 Examination-in-chief by MR WILKEN .....1                  5 Examination by MR PENNICOTT .....2                  6 Cross-examination by MR SO .....24                  7 Cross-examination by MR KHAW .....32                  8 Questioning by THE COMMISSIONERS .....59                  9 (The witness was released) .....60                  10 MR CHEUNG CHIU FUNG, JOE (on former affirmation in ..60                  Punti)                  11                  Cross-examination by MR SO .....60                  12                  13                  14                  15                  16                  17                  18                  19                  20                  21                  22                  23                  24                  25</p>
Page 130	
<p>1 morning. I'm sorry we have to bring you back on Monday                  2 morning. I'm sure there won't be any more questions for                  3 you after Monday; all right? But it does mean that over                  4 the weekend you are not entitled to speak to anybody                  5 about your evidence. All right?                  6 WITNESS: Fully understand.                  7 CHAIRMAN: All right. There is, quite naturally on the part                  8 of friends -- I know you said you don't have any, but                  9 I'm quite sure you do; you're a very personable                  10 character -- but there are people who genuinely want to                  11 discuss your evidence and give advice and give a bit of                  12 wisdom, and that distorts your evidence. Do you                  13 understand me? So you should not discuss matters. Just                  14 say to them, "Sorry, until I'm finished, I'm unable to                  15 talk about this." Do you understand?                  16 WITNESS: I do.                  17 CHAIRMAN: Thank you very much.                  18 (4.51 pm)                  19 (The hearing adjourned until 10.00 am                  20 on Monday, 12 November 2018)                  21                  22                  23                  24                  25</p>	