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| <p>1 Tuesday, 13 November 2018<br/>2 (10.02 am)<br/>3 MR PENNICOTT: Sir, good morning. Good morning, Professor.<br/>4 The next witness is Mr Law. I think Mr Wilken is<br/>5 going to take him in-chief.<br/>6 MR WILKEN: Mr Shieh is going to take him.<br/>7 MR PENNICOTT: Very good.<br/>8 CHAIRMAN: Thank you.<br/>9 MR SHIEH: Good morning, Mr Chairman and Commissioner.<br/>10 Good morning, Mr Law. Do you have in front of you<br/>11 a sheet containing words for taking an affirmation or<br/>12 an oath?<br/>13 Mr Law, when you provide an answer, I would ask you<br/>14 to speak out rather than just nodding, because we have<br/>15 a recording system and it has to pick up words that you<br/>16 speak. So you have that card in front of you; correct?<br/>17 WITNESS: (Via interpreter) Yes.<br/>18 MR LAW CHI KEUNG (affirmed in Punti)<br/>19 (All answers given via simultaneous interpreter<br/>20 except where otherwise specified)<br/>21 Examination-in-chief by MR SHIEH<br/>22 MR SHIEH: Mr Law, could you turn to bundle C34 and look at<br/>23 page 25780. The English version is at 25782. Do you<br/>24 see that, Mr Law? Is it on the screen in front of you?<br/>25 A. Yes, I see it.</p>                       | <p>1 anybody else has some questions for you, they will then<br/>2 get a chance to ask what they wish. Thank you very much<br/>3 for coming to give evidence to the Commission this<br/>4 morning.<br/>5 First of all, Mr Law, can I try to just sort out the<br/>6 various jobs that you had on this site, that is the<br/>7 SCL1112 project site. My understanding is as follows.<br/>8 Firstly, on 20 March 2015, you were employed by<br/>9 a company called K&amp;F Construction as a signalman and<br/>10 banksman; is that correct?<br/>11 A. Correct.<br/>12 Q. Then, at a precise date I'm unsure of, in September<br/>13 2015, you moved to a company called Rankine,<br/>14 R-A-N-K-I-N-E, or Wai Kei; is that correct?<br/>15 A. Correct.<br/>16 Q. Then in February 2007, you worked, as I understand it,<br/>17 for a short period for China Technology; is that<br/>18 correct?<br/>19 A. Correct.<br/>20 Q. Okay. Now, the period that I'm interested in is<br/>21 September 2015. The reason for that is that you have<br/>22 been allegedly identified as appearing in some<br/>23 photographs, and we'll look at those photographs in<br/>24 a moment.<br/>25 Essentially, Mr Law, that is the sole reason why you</p> |
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| <p>1 Q. That is a first witness statement by you; correct?<br/>2 A. Correct.<br/>3 Q. Can you then turn to page 25781. That's the Chinese.<br/>4 The English is 25783. Do you see your name and what<br/>5 appears to be a signature on top of your name?<br/>6 A. Yes, I see it.<br/>7 Q. Do you confirm that that is your signature?<br/>8 A. Yes, this is my signature.<br/>9 Q. Do you put forward this witness statement as your<br/>10 evidence in front of this Commission of Inquiry?<br/>11 A. Yes, correct.<br/>12 MR SHIEH: Mr Law, please continue, be seated where you are,<br/>13 because other lawyers in this Inquiry will ask you some<br/>14 questions. The Commissioners will also ask you<br/>15 questions if they want to, and after all that I may ask<br/>16 you some questions by way of rounding-up and<br/>17 re-examination.<br/>18 WITNESS: Understood.<br/>19 MR SHIEH: And the lawyers will introduce to you whom they<br/>20 represent when they ask you questions.<br/>21 Examination by MR PENNICOTT<br/>22 MR PENNICOTT: Mr Law, good morning.<br/>23 A. (In English) Hello.<br/>24 Q. I'm one of the counsel for the Commission. I get to ask<br/>25 you some questions first. As Mr Shieh has explained, if</p> | <p>1 have been brought along to this Inquiry, but we will<br/>2 come to those photographs in a moment.<br/>3 First of all, in September 2015, when you were<br/>4 working for Wai Kei, what was your job? What were your<br/>5 duties?<br/>6 A. My duties were -- I was a general labourer. That means<br/>7 cleaning up the debris and refuse on site, and I was<br/>8 also the banksman. And then for the materials, and so<br/>9 on, I was responsible for doing the rigging operations.<br/>10 So I was also the banksman and signalman.<br/>11 Q. Right. So, in September 2015, when you switched from<br/>12 K&amp;F Construction to Wai Kei, what colour helmet or hat<br/>13 did you wear?<br/>14 A. Blue.<br/>15 Q. Right. So could we then look at the photographs. They<br/>16 are in D1/601, 602 and 603.<br/>17 Mr Law, we are looking now at D601. It's dated<br/>18 4 September 2015. Now, by 4 September 2015, would you<br/>19 have been working for Wai Kei or Rankine?<br/>20 A. Correct.<br/>21 Q. We can see, I think, one worker in this photograph<br/>22 wearing a blue helmet; do you see that?<br/>23 A. Yes, I see it.<br/>24 Q. Is it you?<br/>25 A. I cannot confirm whether it's me.</p>                    |

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| <p>1 Q. Right. So it might be you and it might not be you?<br/>2 A. Correct.<br/>3 Q. All right. Then, just looking at the photograph, and<br/>4 given the fact that you do accept that you were working<br/>5 on the site, can you tell what the worker with the blue<br/>6 helmet and the worker with the red helmet on his right<br/>7 are actually doing?<br/>8 A. I cannot confirm what they were doing from this photo.<br/>9 Q. Okay.<br/>10 COMMISSIONER HANSFORD: Can we have it bigger again, please<br/>11 Thank you.<br/>12 MR PENNICOTT: Does that help, Mr Law?<br/>13 A. I still cannot confirm what they are doing.<br/>14 Q. All right. We can see that they are obviously -- the<br/>15 worker with the blue helmet is crouching down on a piece<br/>16 of plywood, it looks like, and the worker with the red<br/>17 helmet is probably standing on the rebar.<br/>18 Mr Law, do you have any recollection of carrying out<br/>19 work on the rebar as part of your responsibilities in<br/>20 September 2015?<br/>21 A. We would only have carried out the cleaning of the<br/>22 debris underneath the rebars.<br/>23 Q. Right. So that was, so far as you're concerned, so far<br/>24 as the rebar is concerned, your only function was<br/>25 cleaning debris and suchlike?</p> | <p>1 A. Correct.<br/>2 COMMISSIONER HANSFORD: Can we have this one a little bit<br/>3 bigger? Thank you.<br/>4 Thank you.<br/>5 MR PENNICOTT: Sir, I have no other questions about that<br/>6 photograph, so I'm going to move on to the last one,<br/>7 which is 604, please.<br/>8 CHAIRMAN: Sorry, can I ask one question about it? I notice<br/>9 that there is a cutting machine just very close to where<br/>10 the man in the blue helmet is crouched. Did you ever<br/>11 involve yourself in using that cutting machine, or one<br/>12 like it?<br/>13 A. Yes.<br/>14 CHAIRMAN: What did you do with it?<br/>15 A. The foreman told us that we needed to create openings at<br/>16 certain locations and we had to use this machine.<br/>17 CHAIRMAN: Would that involve cutting rebars?<br/>18 A. Yes.<br/>19 CHAIRMAN: Would it ever involve cutting the end of a rebar<br/>20 that was silver in colour and had little threads going<br/>21 round and round and round?<br/>22 A. I know what you are talking about, but the threaded ends<br/>23 are not involved.<br/>24 CHAIRMAN: Okay.<br/>25 MR PENNICOTT: Sorry, could we just go back to 601 for</p>  |
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| <p>1 A. Correct.<br/>2 CHAIRMAN: Sorry, can you help me just a little bit --<br/>3 cleaning debris. Presumably heavy items of debris like<br/>4 steel chunks would fall right through; is that right?<br/>5 A. There's this chance.<br/>6 CHAIRMAN: So what were you looking for? Bits of paper?<br/>7 I'm just not sure.<br/>8 MR PENNICOTT: What type of debris were you seeking to<br/>9 identify and clear away, Mr Law?<br/>10 CHAIRMAN: Thank you.<br/>11 A. You know, chips of wood, planks, or, you know, the tie<br/>12 wires for bar bending, the leftover wires.<br/>13 MR PENNICOTT: Okay. Did you ever come across any piece of<br/>14 cut threaded rebar?<br/>15 A. When I cleaned the site, I never saw them.<br/>16 Q. Okay. Perhaps we could have a look at the next<br/>17 photograph, 602, please. I'm sorry, 603. There we are.<br/>18 Quite similar to the previous photograph, Mr Law,<br/>19 but this time somebody else in a red helmet has joined;<br/>20 do you see that?<br/>21 A. Yes, I see it.<br/>22 Q. I assume -- again, it is suggested that you are the<br/>23 person in the blue helmet, and I assume your answer is<br/>24 the same that you gave me a short while ago: it may be<br/>25 you or may not be you?</p>   | <p>1 a moment. Could you blow up 601. Okay. And then 604,<br/>2 please.<br/>3 This is the one where we get a better view of the<br/>4 cutter, it would appear. The Chairman has asked you<br/>5 a series of questions about the cutter that was spotted,<br/>6 not so easily but certainly spotted and capable of being<br/>7 spotted, in the previous photographs.<br/>8 Now we've identified clearly the cutter there,<br/>9 Mr Law, can you think of any reason why the cutter would<br/>10 be used in this location?<br/>11 A. From this photograph, it could be possible that the<br/>12 vertical rebars were higher than the concrete level, so<br/>13 the rebars had to be cut so that they would not exceed<br/>14 the concrete level. So this was one possible reason.<br/>15 Q. Right. We can see on the right-hand side of the<br/>16 photograph --<br/>17 COMMISSIONER HANSFORD: Yes, can we have that a little bit<br/>18 bigger?<br/>19 MR PENNICOTT: -- just to the right of the right edge of the<br/>20 cutter, what look to be a couple of vertical rebar; do<br/>21 you see that?<br/>22 A. Yes, I see that.<br/>23 Q. And it's that type of rebar that you say might be cut,<br/>24 for the reasons you gave?<br/>25 A. Are you referring to the vertical bars?</p> |

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| <p>1 Q. Yes, I am.</p> <p>2 A. Yes, they were possibly cut.</p> <p>3 COMMISSIONER HANSFORD: Mr Law, it looks as though they have</p> <p>4 just been cut, because they are silver in colour as</p> <p>5 opposed to rusty in colour -- sorry, that's not silver</p> <p>6 to be mistaken with the threaded bar silver, but that's</p> <p>7 silver -- it looks as though those bars on the right</p> <p>8 have recently been cut. It's difficult to be sure from</p> <p>9 this photograph.</p> <p>10 Does it look to you as though those vertical bars</p> <p>11 have recently been cut?</p> <p>12 A. From the photograph, they have probably not been cut.</p> <p>13 COMMISSIONER HANSFORD: Okay.</p> <p>14 MR PENNICOTT: Right. If we just go, finally, back to 601</p> <p>15 again. If you could blow it up again, please.</p> <p>16 Can you identify on 601, Mr Law, any vertical rebar</p> <p>17 that looks as though it may have recently been cut?</p> <p>18 A. For the silvery or compared with the silvery parts or</p> <p>19 compared with the silvery parts, they probably have been</p> <p>20 cut.</p> <p>21 Q. One can see -- it may of course be just the light, one's</p> <p>22 speculating a bit, I accept, but is it possible -- is</p> <p>23 that what you're saying, it's possible -- that the ones,</p> <p>24 three that look as though they have a different colour</p> <p>25 at the top than the others, it's possible, no higher</p> | <p>1 MR SO: Sir, some very short questions from China</p> <p>2 Technology.</p> <p>3 Mr Law, good morning. I represent China Technology.</p> <p>4 Mr Law, can you tell us your employment status now?</p> <p>5 A. I am now working in Sung Wong Toi. I work under</p> <p>6 a sub-contractor of Leighton.</p> <p>7 Q. Right. Regarding Rankine or Wai Kei that you just</p> <p>8 mentioned to Mr Ian Pennicott just now, do you know the</p> <p>9 role of Rankine or Wai Kei under this SCL1112 contract?</p> <p>10 A. I'm not sure.</p> <p>11 Q. Can I bring you to your witness statement, paragraph 3.</p> <p>12 There you said you were a general labourer at the time</p> <p>13 and worked under the supervision and instruction of</p> <p>14 Leighton's foreman. As I understand about general</p> <p>15 labourer, so you are basically responsible for any jobs</p> <p>16 which are assigned to you by Leighton's foreman;</p> <p>17 correct?</p> <p>18 A. Correct.</p> <p>19 Q. Would this include screwing rebars into the couplers?</p> <p>20 A. No. This is not included.</p> <p>21 Q. So is it your evidence that you have never screwed any</p> <p>22 threaded rebars into the couplers?</p> <p>23 A. Correct.</p> <p>24 Q. You told us you were under the supervision and</p> <p>25 instruction of Leighton's foreman. Can you still recall</p> |
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| <p>1 than that, that they may have been cut?</p> <p>2 A. Yes, probably.</p> <p>3 COMMISSIONER HANSFORD: Can we blow it up again? Yes,</p> <p>4 there. That's it. Thank you.</p> <p>5 MR PENNICOTT: Do you recall yourself -- you mentioned that</p> <p>6 you did some cutting of rebar for the purposes, I think,</p> <p>7 of creating openings is what you said -- do you recall</p> <p>8 yourself personally using the cutter, Mr Law, to cut</p> <p>9 vertical rebar such as we see here?</p> <p>10 A. Yes, I did.</p> <p>11 Q. Can I go back to your answer that I've just mentioned,</p> <p>12 creating openings by cutting rebar. What do you mean by</p> <p>13 that? What sort of openings are you referring to?</p> <p>14 A. We created some sort of a shaft.</p> <p>15 Q. Is that the totality of the answer, "We created some</p> <p>16 sort of shaft"? Okay.</p> <p>17 For what purpose?</p> <p>18 A. It was a shaft for electrical wires or for draining</p> <p>19 purposes.</p> <p>20 Q. All right. And you would only do that under the</p> <p>21 instructions of Leighton; is that right?</p> <p>22 A. Correct. Absolutely.</p> <p>23 MR PENNICOTT: Thank you very much, Mr Law. Others may or</p> <p>24 may not have questions.</p> <p>25 Cross-examination by MR SO</p>  | <p>1 which Leighton foreman instructed or supervised you?</p> <p>2 A. It was Mr Ip.</p> <p>3 Q. Do you mean Mr Andy Ip or do you mean Mr Chan Chi Ip?</p> <p>4 A. Chan Chi Ip.</p> <p>5 MR SO: Thank you. I have no further questions.</p> <p>6 CHAIRMAN: Thank you.</p> <p>7 MR BOULDING: No questions from MTR, sir. Thank you.</p> <p>8 CHAIRMAN: Thank you.</p> <p>9 Cross-examination by MR KHAW</p> <p>10 MR KHAW: Just a few questions, Mr Chairman.</p> <p>11 I am acting for the government.</p> <p>12 If you may take a look at the photograph shown at D2</p> <p>13 [sic], page 603. You could not be sure whether the one</p> <p>14 wearing a blue hat is you or not; right?</p> <p>15 A. Correct.</p> <p>16 Q. Can you recognise the other people shown in this picture</p> <p>17 wearing red hats; do you recognise them?</p> <p>18 A. I cannot recognise them. There were a lot of people</p> <p>19 wearing red helmets at that time. Some workers would</p> <p>20 work at this spot, some at others, so I could not</p> <p>21 recognise these people with red helmets.</p> <p>22 Q. Do you have any idea as to whom they were working for,</p> <p>23 those wearing red hats, whom they were working for; any</p> <p>24 idea?</p> <p>25 A. I don't know.</p>   |

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| <p>1 Q. If we can just let this picture stay on the screen and<br/> 2 then we can try to find another picture, D1/227, and try<br/> 3 to put them side by side. Yes.<br/> 4 Can you see the words or markings in red which state<br/> 5 "plus 1.02"; can you see that? First of all, on 603.<br/> 6 Can you see that?<br/> 7 A. Yes, I see that.<br/> 8 Q. Then if we go to the next picture, D227 --<br/> 9 COMMISSIONER HANSFORD: Sorry, before we do, can I just see<br/> 10 the dates and times on both pictures?<br/> 11 MR KHAW: Yes. 603, that should be 4 September, 9:29 --<br/> 12 COMMISSIONER HANSFORD: And 9:05.<br/> 13 MR KHAW: -- and then the other one is 9:05, yes.<br/> 14 COMMISSIONER HANSFORD: Thank you.<br/> 15 MR KHAW: First of all, can I just confirm with you -- first<br/> 16 of all, we see the words "plus 1.02" -- can you tell us<br/> 17 what are the words stated next to "02"?<br/> 18 A. I can't see.<br/> 19 Q. Then if we can take a look at the other picture, 227,<br/> 20 would you agree that it apparently shows the same area?<br/> 21 A. It should be the same area.<br/> 22 Q. Do you have any recollection as to whether you ever<br/> 23 worked in that area on the site?<br/> 24 A. I probably have worked in this area.<br/> 25 Q. What did you do in that particular area?</p>        | <p>1 right was holding -- can you see that?<br/> 2 A. Yes, I see that.<br/> 3 Q. Is that also a coupler?<br/> 4 A. Yes, this should be the coupler rebar.<br/> 5 Q. Yes. So it's a threaded rebar on a coupler; right?<br/> 6 A. Yes, correct.<br/> 7 Q. If we can take a look at the vertical bar on top of this<br/> 8 horizontal bar held by this person on the right -- do<br/> 9 you see that? -- you see a shiny silver surface on top;<br/> 10 can you see that?<br/> 11 A. Yes, I see it.<br/> 12 Q. Yes. Am I correct in saying that that is also<br/> 13 a threaded rebar from a coupler?<br/> 14 A. It shouldn't be.<br/> 15 Q. So it's a different kind of rebar?<br/> 16 A. Correct.<br/> 17 Q. Even though we can see some threading surrounding this<br/> 18 particular bar? How can you tell that this does not<br/> 19 belong to a threaded rebar from a coupler?<br/> 20 A. Because those spots I often see rebars without threaded<br/> 21 ends, vertical ones.<br/> 22 Q. Right. Then if I can take you to have a look at D1/228.<br/> 23 Just from this picture, do you recognise who this<br/> 24 worker is?<br/> 25 A. I can't recognise him. Looking at his clothing, he</p>   |
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| <p>1 A. I performed rigging of materials, timber, and I also<br/> 2 cleaned up the debris.<br/> 3 Q. How many workers -- we are talking about while you were<br/> 4 working in that particular area -- how many workers were<br/> 5 wearing blue hats; can you remember?<br/> 6 A. There were probably at least three to four.<br/> 7 Q. And they were all working for Rankine or they were<br/> 8 working for different companies?<br/> 9 A. Those workers were probably working for Rankine.<br/> 10 Q. If we can take a look at 601 again. If we can blow up<br/> 11 601 for the time being. Just blow up a little bit more.<br/> 12 A bit more. Yes.<br/> 13 Now, you can see the person on the right wearing the<br/> 14 red hat, can you not?<br/> 15 A. Yes, I see that.<br/> 16 Q. Now, just below his red hat, you can see two sort of<br/> 17 hollow-shaped materials. Are they couplers?<br/> 18 A. In which location?<br/> 19 Q. Just the two bars under the red hat, vertical bars.<br/> 20 A. Just looking at that, it should be the cap of screws.<br/> 21 Q. If we can move down a little bit, if we can look at some<br/> 22 of the vertical steel bars underneath the horizontal<br/> 23 steel bars. If we can blow up a little bit further.<br/> 24 Yes.<br/> 25 If you look at the steel bar that the person on the</p> | <p>1 shouldn't be a Rankine employee.<br/> 2 Q. So, looking at his clothing, do you have any idea as to<br/> 3 where this worker came from, whom he was working for?<br/> 4 A. I'm not sure. There were too many people.<br/> 5 Q. Maybe one more try. 232. Any rough idea as to whom<br/> 6 they were working for, by looking at their clothing,<br/> 7 their helmets, et cetera?<br/> 8 A. Looking at clothing and helmet, I couldn't tell, but for<br/> 9 the action they were performing, screwing in bars, it's<br/> 10 most likely that they were the bar benders of<br/> 11 Fang Sheung.<br/> 12 Q. Thank you.<br/> 13 Finally, if I can take you to have a look at your<br/> 14 paragraph 5 of the witness statement. You said:<br/> 15 "While working on the project, I did not cut off or<br/> 16 shorten any threaded ends of rebars. I do not know of<br/> 17 any person who would have done so. I was also never<br/> 18 instructed by Leighton's staff or any other person to<br/> 19 cut the threaded ends off rebars. I do not know of any<br/> 20 person who gave or received an instruction to cut the<br/> 21 threaded ends off rebars."<br/> 22 Can I just ascertain from you whether you ever saw<br/> 23 any cut threaded rebars on the site? You saw any rebars<br/> 24 having been cut and placed on the site, the threaded --<br/> 25 A. Do you mean rebars or the threaded ends of rebars?</p> |

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| <p>1 Q. I'm sorry, I should have made myself clear. Have you<br/>2 ever seen the threaded rebars of a coupler having been<br/>3 cut and placed on the site?<br/>4 A. (Chinese spoken).<br/>5 MR SHIEH: That's slightly confusing because "threaded<br/>6 rebars of a coupler" seems to mix up numerous concepts.<br/>7 CHAIRMAN: Yes.<br/>8 MR SHIEH: There's a rebar, the end is threaded, and<br/>9 a coupler is what we understand to be the cap, so<br/>10 it's all concepts rolled into one question.<br/>11 MR KHAW: The threaded part of a rebar having been cut and<br/>12 placed on the site?<br/>13 A. I haven't seen it.<br/>14 MR KHAW: Thank you. I have no further questions.<br/>15 MS CHONG: No questions from Fang Sheung.<br/>16 Questioning by THE COMMISSIONERS<br/>17 CHAIRMAN: Good. Thank you. Just a couple of questions, if<br/>18 I may.<br/>19 These photographs just shown, they indicate perhaps<br/>20 that when you were working, other workmen from different<br/>21 companies were working in the area at the same time; is<br/>22 that right?<br/>23 A. Correct.<br/>24 CHAIRMAN: So would it be correct to say that in September<br/>25 2015, for example, and thereafter, while you were still</p> | <p>1 Re-examination by MR SHIEH<br/>2 MR SHIEH: Can the witness be shown D1/227.<br/>3 Mr Law, there are two persons in this photograph.<br/>4 Do you see them?<br/>5 A. Yes, I see them.<br/>6 Q. You have been asked about this photo, and can I draw<br/>7 your attention to the person who seems to be kneeling<br/>8 down; do you see him?<br/>9 A. Yes, I see him.<br/>10 Q. He is holding what appears to be a machine; do you see<br/>11 that?<br/>12 A. Yes, I see that.<br/>13 Q. I thought we had established that it looks like<br/>14 a cutter. Do you accept that?<br/>15 A. Yes, I accept that.<br/>16 Q. Can you tell us, to the best of your ability, looking at<br/>17 this photograph, what that person might be doing?<br/>18 A. From that photo, he should be cutting a vertical bar<br/>19 that was higher than the concrete level.<br/>20 MR SHIEH: I have no further questions. Thank you very<br/>21 much.<br/>22 CHAIRMAN: Thank you.<br/>23 Thank you very much indeed, Mr Law. You have been<br/>24 of great help to us. You can go now. Hopefully you<br/>25 won't need to be called back again. All right? Thank</p>          |
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| <p>1 employed by Rankine, you might be working in this area<br/>2 where they were laying steel bars, and very close to you<br/>3 would be workers from China Technology?<br/>4 A. Correct.<br/>5 CHAIRMAN: You would be doing work given to you by Leighton<br/>6 staff; is that right?<br/>7 A. Yes, correct.<br/>8 CHAIRMAN: While the China Technology people would be doing<br/>9 their own work?<br/>10 A. Yes, correct.<br/>11 CHAIRMAN: Were you ever instructed to actually assist China<br/>12 Technology people?<br/>13 A. Yes.<br/>14 CHAIRMAN: So sometimes, depending on the instructions from<br/>15 Leighton, you might be assisting China Technology for<br/>16 part of the day?<br/>17 A. Yes, correct.<br/>18 CHAIRMAN: But, as I understand it from what you've already<br/>19 said, you would never actually undertake the work of<br/>20 screwing in rebars or anything like that; it would be<br/>21 more general work, carrying and things like that?<br/>22 A. Yes, correct.<br/>23 CHAIRMAN: All right. Thank you very much.<br/>24 MR SHIEH: Very short re-examination, Chairman.<br/>25 CHAIRMAN: Yes.</p>  | <p>1 you for your assistance.<br/>2 WITNESS: (In English) Thank you.<br/>3 (The witness was released)<br/>4 MR SHIEH: Mr Chairman and Mr Commissioner, the next witness<br/>5 is Mr Ho Hiu Tung.<br/>6 CHAIRMAN: Thank you.<br/>7 MR SHIEH: Good morning, Mr Ho.<br/>8 WITNESS: (Via interpreter) Good morning.<br/>9 MR HO HIU TUNG (affirmed in Punti)<br/>10 (All answers given via simultaneous interpreter<br/>11 except where otherwise specified)<br/>12 Examination-in-chief by MR SHIEH<br/>13 MR SHIEH: Mr Ho, in this hearing, every word that is said<br/>14 will be picked up by microphones, so could I ask you,<br/>15 when you give an answer, instead of nodding or giving<br/>16 a gesture, you speak up so that the microphone can pick<br/>17 up what you are saying. Do you understand?<br/>18 A. I understand.<br/>19 Q. Can I ask you to look at bundle C34, page 25784. That's<br/>20 the Chinese version. The English version is at 25786.<br/>21 That is the first witness statement made by you;<br/>22 correct?<br/>23 A. Correct.<br/>24 Q. Can I then ask you to turn to page 25785. The English<br/>25 version is 25787.</p> |

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| <p>1 On that page, above your Chinese name, there is what<br/>2 appears to be a signature; do you see that?<br/>3 A. Yes, I see that.<br/>4 Q. That is your signature; correct?<br/>5 A. Correct.<br/>6 Q. Can I ask you to look at paragraph 6 of this witness<br/>7 statement. Do you have anything to add to or to modify<br/>8 or say in relation to this paragraph?<br/>9 A. Yes.<br/>10 Q. Please tell us.<br/>11 A. The date should be 22 October, and on that day I called<br/>12 Mr But.<br/>13 Q. Stop for a while. Allow the translation to complete.<br/>14 I think the witness said on 22 October he wrote this<br/>15 or he signed this.<br/>16 Did you say you signed it or wrote it on 22 October,<br/>17 this statement?<br/>18 A. I signed on 22 October.<br/>19 Q. Thank you. You said on that day you called Mr But.<br/>20 A. Correct.<br/>21 Q. Did you call Mr But before or after signing it?<br/>22 A. After.<br/>23 Q. Can you tell us about your conversation with Mr But that<br/>24 day?<br/>25 A. Yes. I asked him why he could recognise me when</p>  | <p>1 A. (In English) Good morning.<br/>2 Q. My name is Ian Pennicott and I am one of the counsel for<br/>3 the Commission, and I get to ask you some questions<br/>4 first.<br/>5 Could I ask you, please, to explain why you felt it<br/>6 appropriate to call Mr But?<br/>7 A. I didn't know I had to attend a hearing, and I was not<br/>8 in a good mood at that time.<br/>9 Q. You were not in a good mood because of what? What had<br/>10 put you in a bad mood?<br/>11 A. There were renovation works at my home, and my father<br/>12 was ill.<br/>13 Q. Right. I will put it rather more bluntly: why did you<br/>14 call Mr But?<br/>15 A. I wondered why he identified me in the photograph.<br/>16 Q. How long did this conversation last with Mr But?<br/>17 A. Around two to three minutes.<br/>18 Q. Did you remonstrate with him and ask him why he sought<br/>19 to identify you?<br/>20 A. No. He just said he wondered whether it would be me.<br/>21 Q. All right. Let's put aside the conversation with Mr But<br/>22 and go to your witness statement.<br/>23 You tell us that in 2015 you were a construction<br/>24 worker, employed by Rankine or Wai Kei, and you were<br/>25 deployed to work for Leighton on project SCL1112.</p> |
| <p>Page 22</p> <p>1 I couldn't even identify myself. I asked where he was<br/>2 working and he said he was with China Technology.<br/>3 MR SHIEH: Thank you very much, Mr Ho. Could you then<br/>4 remain in the witness box because other lawyers may have<br/>5 questions for you.<br/>6 WITNESS: I understand.<br/>7 MR SHIEH: And Mr Chairman and Mr Commissioner may also have<br/>8 questions for you.<br/>9 WITNESS: I understand.<br/>10 MR SHIEH: After they have all asked you questions, I may<br/>11 have some follow-up questions for you.<br/>12 WITNESS: I understand.<br/>13 MR SHIEH: Do remain seated.<br/>14 Sorry, subject to your comments on paragraph 6 of<br/>15 your witness statement, do you put forward that<br/>16 statement as your evidence in these proceedings?<br/>17 Can I put it again. We have now heard your<br/>18 additional evidence in relation to paragraph 6 of the<br/>19 witness statement. Do you now put forward the content<br/>20 of your witness statement as your evidence before this<br/>21 Commission of Inquiry?<br/>22 A. Yes.<br/>23 MR SHIEH: Thank you very much.<br/>24 Examination by MR PENNICOTT<br/>25 MR PENNICOTT: Mr Ho, good morning.</p> | <p>Page 24</p> <p>1 Mr Ho, do you recall precisely or approximately, in<br/>2 2015, when you were first deployed to work on the<br/>3 project?<br/>4 A. Probably early September, when I joined the company.<br/>5 Q. Right. So you joined Wai Kei in early September, and<br/>6 your first job for them was at this site; is that<br/>7 correct?<br/>8 A. Yes, correct.<br/>9 Q. Right. Now, when you joined the project in early<br/>10 September, you say, I believe, that you were a general<br/>11 labourer at that time. Is that correct?<br/>12 A. Correct.<br/>13 Q. And that you worked under the supervision and<br/>14 instruction of Leighton's foreman at that time?<br/>15 A. Correct.<br/>16 Q. At that time, what colour helmet or hat were you given<br/>17 when you first started work on the project?<br/>18 A. Yellow.<br/>19 Q. You go on to say in your statement:<br/>20 "I also assisted the foreman with work allocation."<br/>21 And then you say this:<br/>22 "After I was appointed a banksman on 30 September<br/>23 2015, I was provided by Leighton the designated uniform<br/>24 for a banksman, including a red helmet (before that [as<br/>25 you have already told us], my helmet was yellow in</p>                         |

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| <p>1 colour)." <br/>2 Mr Ho, how do you recall that it was 30 September <br/>3 2015 that you were appointed a banksman? <br/>4 A. It was mentioned by the safety division and a safety <br/>5 permit was issued. <br/>6 Q. Right. Understood. So you have gone back and have <br/>7 looked at the permit and you've got the date from that <br/>8 permit? <br/>9 A. Yes. I asked the safety division for the relevant <br/>10 information. <br/>11 Q. Okay. So does it follow from that, Mr Ho, that up to at <br/>12 least 29 September, you would have been wearing a yellow <br/>13 hat and not a red hat? <br/>14 A. Correct. <br/>15 Q. Right. Now can we please look at the photographs, at <br/>16 601 to start with, please. Sorry, D1/601, and please <br/>17 can we make sure we can see the date. <br/>18 Now, this photograph was taken, Mr Ho, we can see, <br/>19 in the bottom right-hand corner, on 4 September 2015; do <br/>20 you see that? <br/>21 A. Yes, I see that. <br/>22 Q. The only person we can see wearing a yellow hat -- <br/>23 sorry, and you would confirm your evidence that at this <br/>24 point in time you would have been wearing a yellow hat? <br/>25 A. Correct.</p>      | <p>1 as at 4 September you did not have a red hat and that <br/>2 you would have been wearing a yellow hat? <br/>3 A. Yes, I am sure, because at that time I was only <br/>4 responsible for measurement work. <br/>5 CHAIRMAN: What was the photograph that was apparently <br/>6 recognised as showing Mr Ho? <br/>7 MR PENNICOTT: Both of these two, sir, that we've looked at, <br/>8 but it's alleged he was wearing a red hat, and it seems <br/>9 to me, with the greatest of respect, and I have no idea <br/>10 what China Technology are going to say about it, if he's <br/>11 right and he didn't get his red hat until 30 September, <br/>12 none of the people in these photographs can be him. <br/>13 CHAIRMAN: Yes. <br/>14 MR PENNICOTT: On that basis, I wasn't proposing to ask him <br/>15 any more about the photographs. <br/>16 CHAIRMAN: No, certainly. <br/>17 Mr Ho, could I ask you, what sort of work were you <br/>18 doing in September for Rankine? <br/>19 A. I was performing measurement work at that time. <br/>20 CHAIRMAN: All right. Can you enlarge on that a little, <br/>21 give more detail? <br/>22 A. We had to take measurements of the water level so that <br/>23 the level could not exceed the alert level. So I was <br/>24 responsible for taking measurements of the water level <br/>25 every half an hour.</p> |
| Page 26   | Page 28   |
| <p>1 Q. The only person we can see in the photograph wearing <br/>2 a yellow hat is the worker at the back of the <br/>3 photograph, standing on the slightly higher level, and <br/>4 apparently looking down; do you see that? <br/>5 COMMISSIONER HANSFORD: There's two of them. <br/>6 CHAIRMAN: Two. <br/>7 MR PENNICOTT: Sorry, two. One even further back. Sorry. <br/>8 It was obscured by my file. Even further back. Two of <br/>9 them. <br/>10 Do you see that? <br/>11 A. Yes, I see that. <br/>12 Q. And are either of those two workers, Mr Ho, you? <br/>13 A. No. <br/>14 Q. You're definite about that? Not they might be you, they <br/>15 might not be you? <br/>16 A. Only China Tech workers would have such outfits. <br/>17 Q. All right. That's entirely consistent, Mr Ho, with <br/>18 other evidence we've had. <br/>19 CHAIRMAN: By that you mean the blue tops, do you? <br/>20 A. Yes, correct. <br/>21 MR PENNICOTT: Could we go to 603, I will make sure this <br/>22 time -- this time, I can't see anybody in the <br/>23 photograph, which is also dated 4 September 2015, <br/>24 wearing a yellow hat; all right? <br/>25 Just one final question, Mr Ho. Are you sure that</p> | <p>1 CHAIRMAN: All right. During your time there, working in <br/>2 this sort of area, did you ever have to cut rebars? <br/>3 A. I did not work at these areas. I only took water <br/>4 measurements. <br/>5 CHAIRMAN: Whereabouts did you take water measurements? <br/>6 A. Pit J and HKC. <br/>7 CHAIRMAN: Okay. Yes. Thank you very much. <br/>8 MR PENNICOTT: Sir, I've got nothing else. <br/>9 Cross-examination by MR SO <br/>10 MR SO: Sir, there are questions from China Technology. <br/>11 Good morning, Mr Ho. I'm Simon So; I represent <br/>12 China Technology. <br/>13 Mr Ho, can you tell us your employment status now? <br/>14 A. I work at Hung Hom 1112. I'm a general labourer. <br/>15 Q. So are you still employed by Rankine/Wai Kei? <br/>16 A. No. Hung Lee. <br/>17 Q. Insofar as you know, what role does this Hung Lee play <br/>18 in this SCL1112; do you know? <br/>19 A. They provide general labourers. <br/>20 Q. We know you gave this witness statement in response to <br/>21 Mr Poon's third witness statement and Mr But's third <br/>22 witness statement. <br/>23 Now, I'm not interested in what you talked with your <br/>24 lawyers, but I want to know how you came to know about <br/>25 your being identified by Mr Poon and Mr But. Who told</p>  |

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| <p style="text-align: right;">Page 29</p> <p>1 you?<br/>2 A. Who? I can't remember.<br/>3 Q. Mr Ho, that was something just about a month ago, and<br/>4 you forgot, you are telling us?<br/>5 A. It should be the lawyers. I can't remember.<br/>6 Q. So your evidence is some day -- one day, somebody called<br/>7 you and told you he is a lawyer and asked you to make<br/>8 a witness statement, like that?<br/>9 A. It should be like that.<br/>10 Q. What do you mean, "It should be like that", Mr Ho? This<br/>11 is something very close to today.<br/>12 A. I was busy with the home renovations, so I just couldn't<br/>13 remember some things.<br/>14 Q. So you then made a witness statement; correct?<br/>15 A. Correct.<br/>16 Q. So, no doubt, you were also shown the annotated<br/>17 photographs produced by Mr But; correct?<br/>18 A. Correct.<br/>19 Q. We all know that you later phoned Mr But.<br/>20 A. Correct.<br/>21 Q. And your reason, you just told this Commission, was<br/>22 twofold. First, you did not know that he is going to<br/>23 attend the hearing, and second, it's that you have a bad<br/>24 mood. Are you serious in saying that you don't know<br/>25 Mr But is giving evidence?</p> | <p style="text-align: right;">Page 31</p> <p>1 had forgotten to bring their helmet, they would just<br/>2 simply grab any helmet on site and to work.<br/>3 A. Some people would do that.<br/>4 Q. You actually did the same; correct?<br/>5 A. No. You know, I'm a clean freak. I care much about<br/>6 cleanliness.<br/>7 Q. The person identified by Mr But is actually you?<br/>8 A. No.<br/>9 MR SO: I have no further questions. Thank you.<br/>10 MR BOULDING: No questions from MTR, sir.<br/>11 CHAIRMAN: Thank you.<br/>12 Cross-examination by MR KHAW<br/>13 MR KHAW: Just two questions.<br/>14 Mr Ho, if you can take a look at the photograph<br/>15 D1/228 -- obviously, we cannot see this person's face<br/>16 clearly. From his clothing, his helmet, et cetera, do<br/>17 you have any rough idea as to where this worker came<br/>18 from?<br/>19 A. I am not sure.<br/>20 Q. 232. The same question. Can you tell us where they<br/>21 came from; any rough estimate?<br/>22 A. Well, if they are bar benders -- because I seldom went<br/>23 to such places. [Possible missing part of translation<br/>24 here].<br/>25 Q. Earlier on, when you were --</p>  |
| <p style="text-align: right;">Page 30</p> <p>1 A. Yes. I honestly did not know.<br/>2 Q. Lawyers didn't tell you that Mr But would give evidence?<br/>3 A. He didn't say so, and I didn't know I was going to give<br/>4 evidence too.<br/>5 Q. So when did you first know that you have to come to give<br/>6 evidence?<br/>7 A. It should be last week.<br/>8 Q. So you told us you were in a bad mood, therefore you<br/>9 called Mr But?<br/>10 A. Correct.<br/>11 Q. You would agree with me, would you not, that you were<br/>12 never a close friend with Mr But?<br/>13 A. On site, we kept in touch often.<br/>14 Q. Mr Ho, I suggest to you that the whole reason why you<br/>15 said you were in a bad mood: because you were positively<br/>16 identified by Mr But.<br/>17 A. I don't think so. My father was ill.<br/>18 Q. Your reason why you phoned Mr But was to try to persuade<br/>19 him not to identify you, is it not?<br/>20 A. No.<br/>21 Q. There were many different helmets, different types -- of<br/>22 different colours, different types of helmets, on the<br/>23 site; correct?<br/>24 A. Correct.<br/>25 Q. I would have to suggest to you, on occasions, if someone</p>                              | <p style="text-align: right;">Page 32</p> <p>1 MR SHIEH: Excuse me, I think the witness also said<br/>2 "(Chinese spoken)", meaning, "I have just joined the<br/>3 workforce" or something similar. Perhaps that can be<br/>4 translated also. I think the witness actually said in<br/>5 Chinese something to the effect of "(Chinese spoken)".<br/>6 INTERPRETER: There's something -- that is, "I just started<br/>7 out", something like that.<br/>8 MR KHAW: Just one more question. When you were earlier on<br/>9 answering Mr Shieh's question in relation to your<br/>10 witness statement, you told us that this witness<br/>11 statement was in fact dated 22 October 2018; do you<br/>12 remember that?<br/>13 A. Yes, I remember that.<br/>14 Q. You can take a look at C25785. This document, your<br/>15 witness statement, was actually dated 23 October. Can<br/>16 I just ask you whether the "23", which apparently was in<br/>17 handwriting, was your handwriting?<br/>18 A. I can't remember. I'm not sure.<br/>19 Q. Any idea why the date was not correctly stated?<br/>20 A. I don't know.<br/>21 Q. But how can you remember so clearly now that you made<br/>22 the statement on the 22nd, not 23 October?<br/>23 A. Because I remember, after I finished the statement, then<br/>24 I called Mr But at night, after I had beer.<br/>25 MR KHAW: Thank you. I have no further questions.</p> |



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| Page 33 | 1 MS CHONG: No questions from Fang Sheung.<br>2 CHAIRMAN: No questions from us. Thank you.<br>3 Re-examination by MR SHIEH<br>4 MR SHIEH: Very brief re-examination.<br>5 Just to follow up on a small point, Mr Ho.<br>6 Earlier on, when you gave the answer, that was in<br>7 answer to the question of whether you could tell where<br>8 the workers at D232 came from, and you were asked to<br>9 give a rough estimate, you said you seldom went to such<br>10 places, and you actually also said you had just come<br>11 out, or words to that effect. Do you remember saying<br>12 that?<br>13 A. Yes, I remember that.<br>14 Q. What did you mean by you had just come out?<br>15 A. No. I'm saying that during those times, I led the cars<br>16 out there. I rarely went to those areas. I worked in<br>17 HKC to lead the trucks. That's what I did at that time.<br>18 MR SHIEH: Thank you very much.<br>19 Questioning by THE COMMISSIONERS<br>20 CHAIRMAN: Sorry, just a final couple of questions. When<br>21 you were working on site, was there any discussion ever<br>22 with your fellow workers about the fact that you had to<br>23 work extra hard because the construction work was<br>24 falling behind?<br>25 A. No.   | Page 35 | 1 MR PENNICOTT: I think the next witness is going to be<br>2 slightly longer than the previous one.<br>3 CHAIRMAN: All right. 15 minutes.<br>4 (11.19 am)<br>5 (A short adjournment)<br>6 (11.41 am)<br>7 MR SHIEH: Chairman, before the next witness is called,<br>8 Leighton has just located in its internal record as to<br>9 when Mr Ho Hiu Tung became a banksman, because the<br>10 Commissioner will remember questions being asked as to<br>11 when he became a banksman and he gave a date of<br>12 30 September. He said something to the effect of having<br>13 gone back to check his white card. Leighton actually<br>14 has a record of when he became a banksman.<br>15 We have provided the documents to Lo & Lo already<br>16 and I trust they will be scanned in the usual way.<br>17 CHAIRMAN: Thank you very much.<br>18 MR SHIEH: I was told that if other parties want hard<br>19 copies, we can make them available, but in the short<br>20 time available we have only been able to make enough<br>21 copies for the Commission and then for Lo & Lo for<br>22 scanning, but I'm sure they can be turned into digital<br>23 form very quickly so that if anything were to turn on<br>24 them, other parties can raise the matter with the<br>25 Commission. |
| Page 34 | 1 CHAIRMAN: Was there ever any discussion about how difficult<br>2 certain aspects of the contract were, for example fixing<br>3 the steel works and that sort of thing?<br>4 A. No. I was only responsible for the trucks, so for the<br>5 first few months I was responsible for conveying the<br>6 materials on the trucks.<br>7 CHAIRMAN: I appreciate that. I'm just wondering if, you<br>8 know, when you were having a chat over a break or<br>9 something like that, if people said, "Wow, we're under<br>10 pressure at the moment, we're falling behind"?<br>11 A. No, because we didn't even know about the progress. We<br>12 wouldn't know.<br>13 CHAIRMAN: All right. Thank you very much.<br>14 Any questions arising from that? No.<br>15 Thank you very much indeed, Mr Ho. Your evidence is<br>16 completed now; okay?<br>17 WITNESS: Thank you very much.<br>18 (The witness was released)<br>19 MR PENNICOTT: Sir, let's see if I can get it right this<br>20 time. Would you like to have the break now or shall we<br>21 get the next witness? It's coming up to 20 past.<br>22 CHAIRMAN: You are visiting an embarrassment upon me.<br>23 MR PENNICOTT: Not at all, upon myself. Perhaps we could<br>24 have 15 minutes now.<br>25 CHAIRMAN: If you think that's a good time. | Page 36 | 1 CHAIRMAN: Thank you very much.<br>2 MR PENNICOTT: Sir, I haven't seen them myself but obviously<br>3 I will look at them over lunchtime.<br>4 CHAIRMAN: Yes.<br>5 MR SHIEH: It was just procured over the very brief morning<br>6 adjournment, so apologies for not having enough hard<br>7 copies. As I said, it's been provided to Lo & Lo and<br>8 I'm sure digital copies will be made available very<br>9 soon.<br>10 COMMISSIONER HANSFORD: Mr Shieh, rather than keeping people<br>11 in suspense, can you tell us what the date is on that<br>12 document?<br>13 MR SHIEH: 30 September.<br>14 MR PENNICOTT: That's a relief.<br>15 MR SHIEH: May I call the next witness, Ms Emily Cho.<br>16 Ms Cho, good morning.<br>17 WITNESS: (Via interpreter) Good morning.<br>18 MS EMILY CHO (affirmed in Puntì)<br>19 (All answers given via simultaneous interpreter<br>20 except where otherwise specified)<br>21 Examination-in-chief by MR SHIEH<br>22 MR SHIEH: Thank you. Please be seated.<br>23 Ms Cho, can you look at bundle C34, page 26476. The<br>24 English is at 26479. Do you see that, Ms Cho?<br>25 A. I see it.  |

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| <p>1 Q. This is your first witness statement. Can you turn to<br/>2 page 26478 for the Chinese, and for the English it is at<br/>3 26481.<br/>4 On this page, do you see, above your Chinese name,<br/>5 what appears to be a signature?<br/>6 A. Yes.<br/>7 Q. That is your signature; is that correct?<br/>8 A. Yes.<br/>9 Q. Can I then ask you to turn to bundle C35. The Chinese<br/>10 is 26645. The English is 26647.<br/>11 Ms Cho, you can see this is your second witness<br/>12 statement; is that so?<br/>13 A. Yes.<br/>14 Q. At 26646 -- and the English is at 26648 -- again, above<br/>15 your Chinese name, you can see what appears to be<br/>16 a signature?<br/>17 A. Yes.<br/>18 Q. Do you confirm that you wish to put forward the content<br/>19 of these two statements as your evidence in this<br/>20 Commission of Inquiry?<br/>21 A. Yes, I confirm.<br/>22 MR SHIEH: Thank you. Please remain seated. Lawyers for<br/>23 other parties may want to ask you some questions, and<br/>24 also Mr Chairman and Mr Commissioner may also ask you<br/>25 questions. After that, I may have some rounding-up</p>   | <p>1 work out what it is that you do to maintain the system.<br/>2 A. It means that every day, via -- I would see if the<br/>3 computer system is operating properly and whether there<br/>4 are entry and exit records. There would be a lot of<br/>5 people entering and leaving the site every day, so if<br/>6 there is an issue with the system such that the<br/>7 recording -- or such that there are no records, then<br/>8 I would ask the relevant staff to follow up.<br/>9 Alternatively, we would identify the problems, and<br/>10 this is to ensure the proper entry and exit records.<br/>11 Q. Yes, I understand. So your role is to try to ensure, as<br/>12 best you can, that the system is operating properly, and<br/>13 your role is to identify any problems that may arise,<br/>14 and if those problems do arise you will either contact<br/>15 one of your senior managers or presumably you would<br/>16 contact the service provider?<br/>17 A. Yes, correct.<br/>18 Q. All right. You go on to say in paragraph 6 of your<br/>19 first witness statement:<br/>20 "That system records the attendance of Leighton and<br/>21 sub-contractors personnel."<br/>22 Now, so far as Leighton personnel is concerned,<br/>23 which personnel of Leighton does the system record?<br/>24 A. It would record Leighton's workers, Leighton's direct<br/>25 workers, or our staff would who use the palm-recognition</p> |
| Page 38  | Page 40   |
| <p>1 questions for you; all right?<br/>2 A. Yes, I understand.<br/>3 MR SHIEH: Thank you.<br/>4 Examination by MR PENNICOTT<br/>5 MR PENNICOTT: Good morning, Ms Cho.<br/>6 A. Good morning.<br/>7 Q. I'm one of the counsel for the Commission, and I get to<br/>8 ask you some questions first, before anybody else.<br/>9 Thank you very much for coming along to give evidence<br/>10 this morning.<br/>11 Ms Cho, first of all, can I ask you, please, to look<br/>12 at paragraph 6 of your witness statement, first witness<br/>13 statement. You say that you are a site clerk in the<br/>14 safety team for the project, and one of your duties is<br/>15 to maintain the project site entry/exit access system.<br/>16 Pausing there, when you say "maintain the project<br/>17 site entry/exit access system", do you mean maintain the<br/>18 records that that system produces?<br/>19 A. I don't quite understand the expression "maintaining the<br/>20 relevant records".<br/>21 Q. Well, I'm just trying to understand what you mean by<br/>22 your words, "maintain the entry/exit access system",<br/>23 because, as I understand it from your second witness<br/>24 statement, you say that the system itself is maintained<br/>25 by a third-party service provider. So I'm trying to</p> | <p>1 or palm-scanning device.<br/>2 Q. Ms Cho, I ask you that question because we have heard<br/>3 some evidence that, for example, the superintendent of<br/>4 Leighton would not be recorded on this in/out system.<br/>5 Is that correct?<br/>6 A. There is a possibility that they would not use the<br/>7 system.<br/>8 Q. All right. If one sort of, as it were, starts from the<br/>9 top and works down, you wouldn't expect the project<br/>10 director to sign in and out on a daily or other basis?<br/>11 A. Yes.<br/>12 Q. And you wouldn't expect the project manager to sign in<br/>13 and sign out, using this system?<br/>14 A. Yes.<br/>15 CHAIRMAN: Sorry, why is that?<br/>16 Sorry, that was your next question?<br/>17 MR PENNICOTT: It wasn't, but it will be in a moment.<br/>18 CHAIRMAN: In which case, I'm being premature again.<br/>19 MR PENNICOTT: You wouldn't expect the construction managers<br/>20 to sign in and sign out?<br/>21 A. Yes, there is such possibility.<br/>22 Q. As I say, you wouldn't expect the general superintendent<br/>23 or the superintendent to sign in and sign out using this<br/>24 system?<br/>25 A. I would like to put it another way. We registered them</p>  |

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| <p style="text-align: right;">Page 41</p> <p>1 in our palm-scanning system, but whether they used this<br/>2 system or not is out of my ambit.<br/>3 Q. Okay. As the Chairman asked just a moment ago, why is<br/>4 it that these more senior people are not required -- if<br/>5 you know the answer to this -- why are they not required<br/>6 to use this system on a daily basis?<br/>7 A. This system aims to safeguard workers working in this<br/>8 construction site, and with the attendance records, if<br/>9 their wages are defaulted, we can resort to the<br/>10 attendance records to prove that they did work at the<br/>11 site or if accidents do happen.<br/>12 Q. Yes. But the broad position is this, isn't it, Ms Cho,<br/>13 that the senior management staff of Leighton -- quite<br/>14 where one draws the line I confess I'm not entirely<br/>15 sure, but the more senior management of Leighton -- are<br/>16 not required, on a day-to-day basis, to sign in and sign<br/>17 out; there are no records of that nature?<br/>18 A. Some of our frontline staff work at the office, and when<br/>19 they come to work they would go to the office directly<br/>20 and they would not pass by those two gates.<br/>21 Q. All right.<br/>22 COMMISSIONER HANSFORD: Sorry, Ms Cho, when they go to the<br/>23 office they wouldn't pass through the gates, but what<br/>24 about when they go on site? Do they then pass through<br/>25 those gates?</p> | <p style="text-align: right;">Page 43</p> <p>1 the two gates are?<br/>2 A. It's not about the size or coverage of this plan. For<br/>3 the Hong Kong Coliseum, for example, I cannot quite<br/>4 identify its location on this plan, so I do not know how<br/>5 to point out the locations of the gates.<br/>6 Q. I see. Okay.<br/>7 Let me just try to tackle it in a slightly different<br/>8 way. We have -- and I don't know whether you've seen<br/>9 it -- a recent witness statement from a Mr Ngai Chun Kit<br/>10 from China Technology. Is that a witness statement that<br/>11 you've looked at, Ms Cho?<br/>12 A. Yes, I did.<br/>13 Q. Right. Now, he tells us that so far as he's aware,<br/>14 there were in fact three gates for entry and exit of the<br/>15 project site. Do you agree with that?<br/>16 A. I do not agree, if you are referring to gates managed by<br/>17 Leighton.<br/>18 Q. All right. Let me just put to you, explain to you, what<br/>19 my understanding of Mr Ngai's evidence is.<br/>20 First of all, he says there was a gate no. 1 which<br/>21 was also called exit D. Does that mean anything to you?<br/>22 A. Gate 1, I know approximately where the location is. The<br/>23 exit D mentioned, I guess he's referring to the exit D<br/>24 of the MTR station. So that's one of the locations.<br/>25 Q. Okay. So gate no. 1 does mean something to you. Can</p> |
| <p style="text-align: right;">Page 42</p> <p>1 A. From the office to the construction site, one would not<br/>2 pass through those two gates.<br/>3 COMMISSIONER HANSFORD: Ah. So is it possible to enter the<br/>4 site via the office, without going through the gate; is<br/>5 that what you're telling us?<br/>6 A. Correct.<br/>7 COMMISSIONER HANSFORD: Okay. Thank you.<br/>8 MR PENNICOTT: Sir, the next couple of questions may assist<br/>9 with that enquiry.<br/>10 Ms Cho, could I ask you, please, to be shown or to<br/>11 be given a hard copy of a plan, a location plan that we<br/>12 have at bundle F34/19757.<br/>13 Sir, you'll recall, when you see it, that this is<br/>14 the plan that Intrafor provided for us, with the various<br/>15 fabrication yards and so forth marked on it.<br/>16 Ms Cho, what I would like you to do, if you would,<br/>17 please, first of all -- you just mentioned two access<br/>18 gates which you refer to in paragraph 7 of your witness<br/>19 statement -- would it be possible, please, to mark on<br/>20 this plan where those two access gates are?<br/>21 A. Sorry, I cannot quite identify the locations on this<br/>22 plan, so I cannot point out where those gates are.<br/>23 Q. Are you saying the plan is not big enough in the sense<br/>24 that it doesn't cover a wide enough area, or you<br/>25 simply -- it is big enough but you can't tell us where</p>  | <p style="text-align: right;">Page 44</p> <p>1 you describe approximately where it is? Not by<br/>2 reference to the plan but just give us a general<br/>3 description of where it is.<br/>4 A. Gate 1 is approximately located at exit D5 of the MTR<br/>5 Hung Hom Station. It would go past the bakery, Orchid<br/>6 Padaria, and then to the end, on the left, that would be<br/>7 gate no. 1.<br/>8 Q. Okay. Then he says that there was a gate no. 2, near<br/>9 what he describes as the Leighton bridge. Does that<br/>10 mean anything to you?<br/>11 A. I don't agree with him on Leighton bridge, because as<br/>12 far as I know the Leighton bridge referred to by him,<br/>13 I guess he's referring to a bridge, but that bridge is<br/>14 not under the management of Leighton.<br/>15 Q. Who manages it?<br/>16 A. I can't recall whether it's MTR or the Penta-Ocean<br/>17 Construction Company now.<br/>18 Q. But not Leighton?<br/>19 A. Correct.<br/>20 Q. Then he says there's a gate no. 3 which is on or near<br/>21 the Cheong, C-H-E-O-N-G, Wan, W-A-N, Road. Does that<br/>22 mean anything to you?<br/>23 A. I know the location is close to the funeral parlour.<br/>24 Q. And is that a Leighton entry and exit point?<br/>25 A. Yes.</p>  |

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| <p>1 Q. Therefore, am I right in thinking that it's gate no. 1<br/>2 and gate no. 3, as I've just described it to you, that<br/>3 have the entry and exit electronic system?<br/>4 A. Yes, correct.<br/>5 Q. Right. And they both have that system?<br/>6 A. Yes.<br/>7 Q. All right.<br/>8 Ms Cho, you say in paragraph 8 of your witness<br/>9 statement, first witness statement, last sentence, that<br/>10 you confirm that they, that is the site attendance<br/>11 records, are accurate records of the monthly employee<br/>12 reports for China Tech personnel as generated by the<br/>13 system. I assume that you would apply that description<br/>14 to other sub-contractors: Intrafor, Fang Sheung, and any<br/>15 other sub-contractors?<br/>16 A. Yes, probably.<br/>17 Q. As you say, they are accurate records as generated by<br/>18 the system, but of course the records are only as<br/>19 accurate and as good as they should be if people<br/>20 actually use the system?<br/>21 A. Correct.<br/>22 Q. And so if workers or other personnel decide, for<br/>23 whatever reason, that they're not going to use the<br/>24 system on any particular day, clearly the records are<br/>25 not going to show those persons as being present?</p>                                     | <p>1 that something you're familiar with?<br/>2 A. I'm not familiar with that.<br/>3 Q. All right.<br/>4 CHAIRMAN: Sorry, have you heard of it? Are you aware where<br/>5 it may be situated?<br/>6 A. I heard someone mentioning it that at the security post<br/>7 there would be this book, but how people signed it or<br/>8 for what reasons people signed it, I don't know the<br/>9 reasons.<br/>10 MR PENNICOTT: And it's not a book that you ever looked at<br/>11 or considered its contents?<br/>12 A. Yes, because the location is not under the ambit of the<br/>13 safety division, so I wouldn't have access to that<br/>14 information.<br/>15 Q. Right. Who would be interested in that particular book?<br/>16 I mean, it's there, people were signing in/signing out.<br/>17 Who was responsible for that book?<br/>18 A. As far as I know, it should be the previous logistics<br/>19 department.<br/>20 Q. We are going to have another go at trying to identify<br/>21 where the gates are, because those that are cleverer<br/>22 than me have found another plan.<br/>23 Could we please be shown on the screen<br/>24 bundle H2/436. We haven't got many hard copies; only<br/>25 two.</p>   |
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| <p>1 A. Correct.<br/>2 Q. We have heard evidence from Mr Pun from Fang Sheung, he<br/>3 was the owner of Fang Sheung, and he was there just<br/>4 about every day, he told us, throughout the course of<br/>5 Fang Sheung's works, and he never used the system at<br/>6 all. Were you aware of that?<br/>7 A. Can I ask, you mean Mr Pun of Fang Sheung or Mr Poon of<br/>8 China Technology?<br/>9 Q. Mr Pun of Fang Sheung.<br/>10 A. I'm not sure -- the Mr Pun of Fang Sheung you referred<br/>11 to, who is he?<br/>12 Q. He's the owner of Fang Sheung, Ms Cho, the boss.<br/>13 A. Can you repeat your question, please?<br/>14 Q. Yes. Mr Pun of Fang Sheung, he's the owner, the boss of<br/>15 Fang Sheung, was there throughout the course of<br/>16 Fang Sheung's works. He spent time in the office, he<br/>17 visited the site on a very regular basis to inspect what<br/>18 his workers were doing, and there's no sign of him<br/>19 whatsoever in the sign-in/sign-out records. Were you<br/>20 aware of that?<br/>21 A. I'm not sure about that. I don't know about it.<br/>22 Q. All right.<br/>23 We heard evidence from him that at one of the entry<br/>24 points and exit points, there was something that he<br/>25 described as a visitor's book which he would sign. Is</p> | <p>1 Ms Cho, if I show you this one, which we've actually<br/>2 highlighted up -- okay, you've been given another one.<br/>3 Sir, I'll do my best to try --<br/>4 COMMISSIONER HANSFORD: It's fine.<br/>5 MR PENNICOTT: Ms Cho, if you look at this plan that we have<br/>6 here, if you go towards the top of the page you will see<br/>7 a line of circles with numbers in: 1/3/5/7/9; 0/2/4/6,<br/>8 et cetera. Then you will see the words<br/>9 "Salisbury Road"; do you see that?<br/>10 A. Yes, I see it.<br/>11 Q. Just underneath that, there's a grey area, and then just<br/>12 underneath that, there's a box with "Gate 1" marked in<br/>13 it; do you see that?<br/>14 A. Yes, I see it.<br/>15 Q. Is that, gate 1, the one we were discussing just<br/>16 a moment ago, with the electronic system?<br/>17 A. Well, looking at the plan and the annotation there, yes,<br/>18 it's the one.<br/>19 Q. Then, if one goes to the left of that box -- thank you<br/>20 very much -- you will see a line of circles, A/C/E, and<br/>21 to the right of those circles and letters, you will see<br/>22 a box, "Gate 5"; do you see that?<br/>23 A. Yes, I see it.<br/>24 Q. Now, does that -- are you familiar with that entry and<br/>25 exit point, and does it have the electronic system?</p> |

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| <p>1 A. As far as I know, at this location there is no<br/>2 electronic system, and I am not familiar with the<br/>3 location of this gate.<br/>4 Q. Then if we could go to the other side of the plan,<br/>5 please, and towards the bottom -- Ms Cho, you might be<br/>6 able to see in the bottom right-hand corner<br/>7 an annotation, "Royal Peninsula"; do you see that?<br/>8 A. Yes, I see it.<br/>9 Q. If you go diagonally, at around 10 o'clock, as it were,<br/>10 you'll see "Gate 3" at the end of what appears to be<br/>11 some form of temporary road; do you see that?<br/>12 A. Yes, I see it.<br/>13 Q. Now, is that the other, the second, "Gate 3", entry and<br/>14 exit point with the electronic system?<br/>15 A. It should be, yes.<br/>16 Q. Thank you very much.<br/>17 COMMISSIONER HANSFORD: Sorry. And are there any other<br/>18 gates? We've heard of gate 1, gate 3, gate 5. What<br/>19 happened to 2 and 4?<br/>20 MR PENNICOTT: Sir, it's a bit like rebar.<br/>21 COMMISSIONER HANSFORD: Okay. Very good.<br/>22 MR PENNICOTT: I don't know, sir. We've failed to find<br/>23 2 and 4. We've only found the odd numbers.<br/>24 COMMISSIONER HANSFORD: Okay.<br/>25 MR PENNICOTT: Ms Cho, you are not aware of any other entry</p>   | <p>1 or if unfortunately they encountered any accidents<br/>2 on site, then there would be a record to prove that they<br/>3 worked on the site.<br/>4 CHAIRMAN: All right. Yes. So certain people whose salary<br/>5 or whose wages or whose income was not governed by the<br/>6 number of hours that they worked on site didn't need to<br/>7 register?<br/>8 A. No. All staff who attended the induction class at the<br/>9 construction site at the first day of work have to<br/>10 register themselves.<br/>11 CHAIRMAN: Ah. So if you didn't attend that first day, then<br/>12 you didn't need to?<br/>13 A. I don't know whether staff from certain companies<br/>14 skipped the induction class on the first day and still<br/>15 worked at the site.<br/>16 CHAIRMAN: Okay. Thank you.<br/>17 MR PENNICOTT: Ms Cho, I understand that one thing that<br/>18 would happen, on an essentially monthly basis, is that<br/>19 you would send out the site attendance records from the<br/>20 electronic system to each of the sub-contractors that<br/>21 Leighton had engaged. Is that correct?<br/>22 A. Incorrect. This operation was conducted by my<br/>23 predecessor and I did not send any emails to the<br/>24 sub-contractors.<br/>25 Q. I'm not sure whether something got lost in translation</p>  |
| Page 50  | Page 52  |
| <p>1 and exit points other than 1 and 3?<br/>2 A. As far as I know, Leighton's main access points are<br/>3 gates 1 and 3.<br/>4 Q. Okay. Thank you very much.<br/>5 Now, returning to the records --<br/>6 CHAIRMAN: Sorry, could I just ask one thing?<br/>7 MR PENNICOTT: Of course.<br/>8 CHAIRMAN: When you took up this job, were you told what the<br/>9 main purpose of the computerised system for governing in<br/>10 and out was?<br/>11 A. I only know that on the first day on the job, I knew<br/>12 that for people going into the site to work, they had to<br/>13 register their palm prints, and at the end of the class<br/>14 we must make sure that they could use our system to log<br/>15 with their card.<br/>16 CHAIRMAN: All right. But do they -- because what you have<br/>17 indicated, perhaps, is that the purpose was to ensure<br/>18 that employees would be registered going in and going<br/>19 out for purposes of salary or pay, and/or so that you<br/>20 knew who was in there working at any one time, for<br/>21 safety reasons. Would that be right?<br/>22 A. I heard instructors said at safety classes, or they<br/>23 explained to those attending classes, to say the reason<br/>24 why they were required to log in and out is to make sure<br/>25 there are records, so in case there's a default in wages</p> | <p>1 there. The monthly records that the electronic system<br/>2 recorded for each sub-contractor, were they sent out to<br/>3 the sub-contractors, those records, on a monthly basis?<br/>4 A. The act of sending these records to the sub-contractors<br/>5 were not done by me.<br/>6 Q. Okay. Were you --<br/>7 MR SHIEH: Excuse me, there may be a subtle difference in<br/>8 nuance between two senses of a phrase used by the<br/>9 witness, because the witness used the Chinese phrase<br/>10 "(Chinese spoken)", which could mean predecessor or it<br/>11 could mean an ex-colleague who had already left.<br/>12 MR PENNICOTT: Thank you very much.<br/>13 Ms Cho, you say that the act of sending the records<br/>14 to the sub-contractor was not done by you, and I'm happy<br/>15 to accept that. Were you aware that somebody else sent<br/>16 the records to the sub-contractors?<br/>17 A. As far as I know, the administration division did send<br/>18 out the records. Someone in that division did it but<br/>19 I'm not sure whether someone is still doing it now.<br/>20 (Discussion off the record)<br/>21 Q. So it was the administration department, so far as you<br/>22 are aware, that would send out the records to the<br/>23 sub-contractors?<br/>24 A. They used to do it.<br/>25 Q. Right. Because China Technology, at least, have</p> |

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| Page 53 | 1 provided to the Commission, attached to Mr Ngai's<br>2 witness statement that I referred to earlier, copies of<br>3 the electronic records that they say were sent to them<br>4 on a monthly basis. Do you understand?<br>5 A. I understand.<br>6 Q. And what Mr Ngai points out in his witness statement,<br>7 which I think you indicated to me earlier you had read,<br>8 are various discrepancies between the records that China<br>9 Technology have in their possession and the records that<br>10 Leighton have provided to the Commission in respect of<br>11 China Technology's attendance at the site. Do you<br>12 understand the point?<br>13 A. I understand.<br>14 Q. I would just like to see, Ms Cho, whether you are able<br>15 to help us with those discrepancies. This is not going<br>16 to be easy on the screen but we will do our best. I'm<br>17 only going to take two examples; there are many,<br>18 however.<br>19 Could I ask you, please, first of all, to be shown<br>20 D2/1153. That is the first page of the month of<br>21 November, from the records attached to Mr Ngai's<br>22 statement.<br>23 Could we please compare that with bundle C8/5738.<br>24 COMMISSIONER HANSFORD: Sorry, is the -- ah, yes. My<br>25 question is being answered.   | Page 55 | 1 Q. Whereas, on the document that Leightons have provided us<br>2 with at C5738, all the entries are blank, so a reverse<br>3 situation to the previous one.<br>4 Again, Ms Cho, are you able to explain why there is<br>5 such a difference?<br>6 A. These reports would be generated with a few buttons, and<br>7 there was no human editing, so I am not sure.<br>8 Q. Right. Could I ask you, please, to look at -- hang on,<br>9 before we go there, sorry, can we just stick with 1153,<br>10 another example of a discrepancy.<br>11 If you look at the very first worker recorded on<br>12 1153, an Au Hin Ting; do you see him?<br>13 A. Yes, I see that.<br>14 Q. And that worker is there registered, or signed in/signed<br>15 out, for 5 and 6 November; do you see that?<br>16 A. Yes, I see that.<br>17 Q. And in the "Work day" figure on the right-hand side<br>18 reflecting those two sign-in/sign-out days, is "2"; do<br>19 you see that?<br>20 A. Yes, I see that.<br>21 Q. Whereas if you look at the Leighton record at C8/5738,<br>22 that same worker is there not just for those two days<br>23 but also for a third day; do you see? So a slightly<br>24 different discrepancy this time.<br>25 A. Yes, I see that.   |
| Page 54 | 1 MR PENNICOTT: Now, Ms Cho, you've got the hard copies in<br>2 front of you, which is going to make life easier for<br>3 you. If we can first of all look at 4 November; do you<br>4 see that? And on D1153, which are the records that<br>5 China Technology provided us with, printed out on<br>6 1 December 2015, top-right corner, the entirety of<br>7 4 November is blank; do you see that? If you draw a<br>8 highlight down the line, nobody is there on 4 November;<br>9 do you see that?<br>10 A. Yes, I see that.<br>11 Q. Whereas on C5738, for the same day, one can see that<br>12 a number of workers are present on this particular<br>13 sheet, about eight -- seven workers; do you see that?<br>14 A. Yes, I see that.<br>15 Q. Are you able to explain the difference or discrepancy,<br>16 apparent discrepancy, between the two sheets?<br>17 A. For the report from 2015, it was not sent to China<br>18 Technology by myself, so I do not know the circumstances<br>19 under which this report was produced.<br>20 Q. All right. Just to, as it were, look at another one on<br>21 the same sheet, if you look -- and it's really the<br>22 reverse situation -- if you look at 26 November, on the<br>23 China Technology sheet at 1153, you will see five<br>24 workers in attendance; do you see that, 26 November?<br>25 A. On 26 November, five workers were present. | Page 56 | 1 Q. Are you able to explain that discrepancy?<br>2 A. As I said, these reports were generated by the system,<br>3 and there was no editing done manually, so I do not know<br>4 why.<br>5 Q. Okay. Before I trouble you further, Ms Cho, let me just<br>6 see whether I need to.<br>7 I will, just to raise one point with you. Could you<br>8 please be shown D1129. That's D2/1129. Compare that,<br>9 please, with C8/5713. These are the two sheets for --<br>10 the first sheet for September 2015.<br>11 The first point to note, Ms Cho, is if you look at<br>12 the China Technology print-out, the third general worker<br>13 down is somebody called Chan Kit; do you see that?<br>14 A. Yes, I see it.<br>15 Q. If you look at the Leighton record, at 5713, that worker<br>16 does not appear at all, so far as I can tell. Can you<br>17 explain that one, Ms Cho?<br>18 A. It's possible that the worker changed to a different<br>19 company. That's why the information would be put in the<br>20 new company, under his name.<br>21 Q. I see. That's what happened, I remember, to Mr Law, is<br>22 that right, that we were hearing from earlier, that when<br>23 he transferred ultimately to China Technology, all his<br>24 previous records, even if he had worked for other<br>25 sub-contractors, would come under China Technology; is |

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| <p>1 that the way the system works?<br/>2 A. Yes, there could be such cases.<br/>3 Q. Right. So that could be an explanation for why Mr Chan<br/>4 Kit does not appear. All right.<br/>5 COMMISSIONER HANSFORD: Sorry, how is that an explanation?<br/>6 MR PENNICOTT: Sir, if this worker, Chan Kit, was there --<br/>7 let me get this around the right way -- at the time, in<br/>8 September 2015, and this monthly record was sent out to<br/>9 China Technology, and they printed it out, that's why he<br/>10 appears on the document they have.<br/>11 Are you with it so far?<br/>12 COMMISSIONER HANSFORD: I am, yes.<br/>13 MR PENNICOTT: What then happens is that if Mr Chan Kit<br/>14 subsequently moved to another sub-contractor, let's say,<br/>15 he moved from China Technology to Fang Sheung, all his<br/>16 previous records would then fall under Fang Sheung,<br/>17 irrespective of time, on the Leighton system. So, if<br/>18 this is the Leighton print-out which we know was printed<br/>19 this year, that might explain that discrepancy.<br/>20 COMMISSIONER HANSFORD: I follow the logic. Thank you.<br/>21 MR PENNICOTT: Have I got that right, Ms Cho?<br/>22 A. Yes, correct.<br/>23 MR PENNICOTT: Sir, I spent perhaps a disproportionate<br/>24 amount of time going through that. I've also spent<br/>25 a disproportionate amount of time looking at all of</p> | <p>1 CHAIRMAN: I took it, Mr To, that she's really talking about<br/>2 monitoring, as opposed to maintaining in a technical<br/>3 sense. So she's not the person who fixes the things<br/>4 that go bang in the night; she is the person who<br/>5 monitors the system and if it falls down, she then goes<br/>6 to the technology backup people.<br/>7 MR PENNICOTT: I thought her answer was pretty clear.<br/>8 MR TO: Thank you, Chairman, on that.<br/>9 I just want to ask you, Ms Cho -- so you maintain --<br/>10 do you actually submit forms GF257? Are you familiar<br/>11 with that form?<br/>12 A. I'm not familiar with it.<br/>13 Q. Are you familiar with a form called DAR?<br/>14 A. DAR forms?<br/>15 Q. It's called daily attendance record.<br/>16 A. Can I ask the forms to be submitted to who?<br/>17 Q. You have to submit it to a certain authority. Do you do<br/>18 that?<br/>19 A. Can I ask you, are you referring to the weekly<br/>20 submission of the records?<br/>21 Q. Yes, that's what I'm asking.<br/>22 A. Well, for these records, yes, I am the one to submit<br/>23 them.<br/>24 Q. Who do you give that document to?<br/>25 A. I submitted it to the Construction Industry Council.</p>   |
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| <p>1 these records, and I'm afraid -- I'm not making a big<br/>2 point of this -- there are similar discrepancy<br/>3 discrepancies, as Mr Ngai has pointed out, all over the<br/>4 place, irrespective of where you look. Whichever month<br/>5 you look at, you are going to get the same sort of<br/>6 problems time and time again, and that's as far as I can<br/>7 take it. I'm not proposing to ask Ms Cho any further<br/>8 questions.<br/>9 CHAIRMAN: Thank you very much.<br/>10 MR TO: Chairman, China Technology has a few questions to<br/>11 ask Ms Cho.<br/>12 CHAIRMAN: Yes, certainly.<br/>13 Cross-examination by MR TO<br/>14 MR TO: Good morning, Ms Cho. I represent China Technology<br/>15 My name is Christopher To. I have a few questions to<br/>16 ask you.<br/>17 My learned friend Mr Ian Pennicott this morning<br/>18 asked you about the word "maintain". Can you remember<br/>19 that word?<br/>20 A. Yes, I remember that.<br/>21 Q. Can you explain to us what did you do in terms of<br/>22 "maintain"?<br/>23 A. That is every day that I need to make sure the system is<br/>24 working properly. So I need to make sure the system is<br/>25 working properly every day.</p>  | <p>1 Q. (Overspeaking the interpreter) For what purpose?<br/>2 COMMISSIONER HANSFORD: I'm sorry, you are going to have to<br/>3 stop so we get the reply before asking the next<br/>4 question. Thank you.<br/>5 MR TO: Sorry.<br/>6 For what purpose?<br/>7 A. As far as I know, for all construction companies, they<br/>8 have to submit the records.<br/>9 Q. Are the records supposed to be accurate?<br/>10 A. The records were generated from the system. That's all.<br/>11 Q. Can I take you to the transcript, Ms Cho, of Mr Cheung<br/>12 Chiu Fung, Joe, at Day 15, page 64, line 17. I will<br/>13 read it out slowly to you, so it can get translated:<br/>14 "Question: Now I wish to bring you to C6379. This<br/>15 is the December sign-in/sign-out record. We cannot find<br/>16 your name on this sign-in/sign-out record. Can you tell<br/>17 us, if you know, what is the reason of that?<br/>18 Answer: I'm not sure about this record.<br/>19 Question: I see. This situation similarly occurred<br/>20 on page C6372. This is the November sign-in/sign-out<br/>21 record, and again your name was not there. Do you know<br/>22 the reason of it, if you know?"<br/>23 And your answer on the next page is --<br/>24 MR PENNICOTT: It's not her answer.<br/>25 MR TO: -- "I don't remember. Perhaps by that time</p> |

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| <p>1 I already had a vehicle and I just drove in and out of<br/>2 the site."<br/>3 Ms Cho, you were asked certain questions about, for<br/>4 example, entries. When Mr Cheung mentioned driving in,<br/>5 did he mention gate 5?<br/>6 A. As far as I know, it should be gate 3.<br/>7 Q. Can I take you to another transcript. This is Mr Jason<br/>8 Poon on Day 11, page 115, line 9. I will just read it<br/>9 out slowly:<br/>10 "Question: But can you tell us, by looking back at<br/>11 that diagram, C8/6172, is there any sign-in/sign-out of<br/>12 your name?<br/>13 Answer: No, no.<br/>14 Question: Can you tell us something about that?<br/>15 Answer: Because I did not use the card. I did not<br/>16 punch -- I didn't use that palm print device to go<br/>17 inside. I went through the D5 gate which is the<br/>18 vehicular access.<br/>19 Question: So, in a way, you went in there through<br/>20 another sort of entry point?<br/>21 Answer: It's next to the sign-in/sign-out device<br/>22 and I could go through the vehicular access. I parked<br/>23 my car inside the site. That's why I didn't have to go<br/>24 through this process."<br/>25 Ms Cho, so there was another entry point into the</p>                                | <p>1 "Leighton safety officer trainee Ben Hui reminded<br/>2 all sub-contractors that:<br/>3 ...<br/>4 c. Remind all workers entered site area should be<br/>5 use palm recorder."<br/>6 What does he mean by that?<br/>7 A. It was what it meant. He wanted to remind all workers<br/>8 that those entering the site area should use the palm<br/>9 recorder.<br/>10 Q. My last question is: only construction workers who are<br/>11 registered with the Construction Industry Council are<br/>12 required to use palm print for entry into the site;<br/>13 am I correct in saying that?<br/>14 A. Incorrect. If they did not hold a construction workers<br/>15 registration card, they would be given a so-called white<br/>16 card issued by us so they can enter and leave the site.<br/>17 Q. (Overspeaking the interpreter) But if they forget to<br/>18 bring the white card?<br/>19 COMMISSIONER HANSFORD: I'm sorry, you are continually doing<br/>20 that and I'm not able to get the answer. Thank you.<br/>21 A. If they forget to bring the card, this is something out<br/>22 of my control.<br/>23 MR TO: Can they still go into the site if they don't have<br/>24 the card?<br/>25 A. As I said, I'm not sure about how they enter the site at</p> |
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| <p>1 site without going through the palm-printing device; is<br/>2 this correct?<br/>3 A. I guess the D5 gate he referred to should be the<br/>4 location of gate 1.<br/>5 Q. Can you go into the site without putting your palm into<br/>6 the device, to record it?<br/>7 A. I'm not sure about how they entered the gate, because<br/>8 I was not there to watch them go in and out.<br/>9 Q. Can I ask you another question, Ms Cho. The question<br/>10 is -- can you look at document D1565, in particular<br/>11 D1576, in particular 6.1.<br/>12 I will just read it out to you, 6.1:<br/>13 "Leighton safety officer Max Chan reminded all<br/>14 sub-contractors that:<br/>15 Please ensure your workers with daily computerised<br/>16 attendance record as some of the computerised attendance<br/>17 records were totally different from what sub-contractors<br/>18 reports."<br/>19 Do you understand why Mr Max Chan or someone said<br/>20 that?<br/>21 A. My guess is he said that because he wanted to remind the<br/>22 representatives of the sub-contractors, so they would<br/>23 remind their workers to tap their cards.<br/>24 Q. Also, if you go to the same document, item 6.2, just<br/>25 below -- I will just read it out to you:</p> | <p>1 the gate.<br/>2 Q. (Overspeaking the interpreter) So they can go through<br/>3 the guard entry? Sorry.<br/>4 COMMISSIONER HANSFORD: Could you repeat the question?<br/>5 MR TO: I will repeat the question.<br/>6 If they don't have a white card, can they still gain<br/>7 entry to the site?<br/>8 A. Without the white card, they should be holding<br/>9 a construction workers registration card.<br/>10 Q. But if they don't have a construction workers card?<br/>11 A. As I said, if they don't hold a construction workers<br/>12 card, they would be given a white card.<br/>13 Q. If they don't bring their white card to go in, can they<br/>14 still go into the construction site?<br/>15 A. As I said, the fact that they might forget to bring<br/>16 their cards is not within my control.<br/>17 Q. So how can they go into the site?<br/>18 A. This is not within my ambit on how they enter the site.<br/>19 Q. You mentioned about a guard entry point.<br/>20 A. Yes.<br/>21 Q. What is that?<br/>22 A. At our two main points of entry, there would be<br/>23 a security post, and that would be the place where<br/>24 security guards work.<br/>25 Q. Can they go past the security guard post, if they don't</p>                       |



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| <p>1 have the card?</p> <p>2 A. As I said, I do not know about entry issues.</p> <p>3 MR TO: Thank you, Ms Cho. No further questions.</p> <p>4 MR BOULDING: No questions from MTR, sir.</p> <p>5 CHAIRMAN: Thank you very much.</p> <p>6 MR KHAW: No questions from the government.</p> <p>7 CHAIRMAN: Thank you.</p> <p>8 MS CHONG: No questions from Fang Sheung.</p> <p>9 CHAIRMAN: Thank you.</p> <p>10 Re-examination?</p> <p>11 MR SHIEH: No re-examination.</p> <p>12 CHAIRMAN: Thank you.</p> <p>13 Peter, anything?</p> <p>14 COMMISSIONER HANSFORD: No, nothing from me.</p> <p>15 CHAIRMAN: Thank you very much.</p> <p>16 Thank you, your evidence is completed now. Thank</p> <p>17 you.</p> <p>18 WITNESS: Thank you.</p> <p>19 (The witness was released)</p> <p>20 COMMISSIONER HANSFORD: Can I make an observation here,</p> <p>21 Mr Pennicott? Sorry, I'm referring to you because I'm</p> <p>22 not quite sure who else I should refer to.</p> <p>23 MR PENNICOTT: That's all right. That's what I'm here for.</p> <p>24 COMMISSIONER HANSFORD: But if Cantonese-speaking counsel</p> <p>25 were to wear their headphones when they ask their</p>   | <p>1 (2.13 pm)</p> <p>2 MR TO: Good afternoon, Mr Ngai. Can you tell the Chairman</p> <p>3 and the Commissioner your name in full, please?</p> <p>4 WITNESS: (Via interpreter) My name is Ngai Chun Kit.</p> <p>5 MR NGAI CHUN KIT (affirmed in Punti)</p> <p>6 (All answers given via simultaneous interpreter</p> <p>7 except where otherwise specified)</p> <p>8 Examination-in-chief by MR TO</p> <p>9 MR TO: Mr Ngai, I'm going to take you to a document. It's</p> <p>10 D2/D1112.</p> <p>11 A. Yes.</p> <p>12 Q. Mr Ngai, this is your witness statement; correct, or not</p> <p>13 correct?</p> <p>14 A. Correct.</p> <p>15 Q. Can I take you to the last page, D1116. Can you see</p> <p>16 page D1116?</p> <p>17 A. Yes, I see that.</p> <p>18 Q. Is that your signature on this page?</p> <p>19 A. Correct.</p> <p>20 Q. The date of this witness statement is 7 November 2018;</p> <p>21 is this correct?</p> <p>22 A. Correct.</p> <p>23 Q. Mr Ngai, do you wish to adopt this witness statement as</p> <p>24 part of your evidence?</p> <p>25 A. Yes, I will.</p>  |
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| <p>1 questions, I think they might then understand the need</p> <p>2 for the pause before asking the next question, because</p> <p>3 it's quite obvious to me when I'm wearing the headphones</p> <p>4 that a pause is necessary.</p> <p>5 MR PENNICOTT: That's right. Alternatively, and/or look at</p> <p>6 the transcript.</p> <p>7 COMMISSIONER HANSFORD: That's the other way.</p> <p>8 MR PENNICOTT: I appreciate it must be very difficult for</p> <p>9 those who are bilingual and of course they've heard the</p> <p>10 answer and they just want to get on with the next</p> <p>11 question. I understand it must be very difficult. But</p> <p>12 you are right, sir. It was a bit unfortunate there; we</p> <p>13 were missing the end of most answers.</p> <p>14 COMMISSIONER HANSFORD: But it's happened a few times.</p> <p>15 MR PENNICOTT: It has, sir, yes.</p> <p>16 COMMISSIONER HANSFORD: Okay.</p> <p>17 MR PENNICOTT: Sir, the next witness is Mr Ngai. Perhaps it</p> <p>18 would be appropriate to break early today and then start</p> <p>19 perhaps a little bit earlier. Whilst I think Mr Ngai is</p> <p>20 going to be pretty quick, I'm not convinced nine minutes</p> <p>21 is going to be enough. Perhaps we can come back at</p> <p>22 10 past or --</p> <p>23 CHAIRMAN: All right. 2.10.</p> <p>24 (12.53 pm)</p> <p>25 (The luncheon adjournment)</p> | <p>1 MR TO: Mr Ngai there are going to be lawyers here in this</p> <p>2 room who will ask you some questions, so I will hand it</p> <p>3 over to them now. Speak slowly because it's being</p> <p>4 translated.</p> <p>5 WITNESS: I'm clear about that. Thank you very much.</p> <p>6 Examination by MR PENNICOTT</p> <p>7 MR PENNICOTT: Mr Ngai, good afternoon. My name is Ian</p> <p>8 Pennicott.</p> <p>9 A. Good afternoon.</p> <p>10 Q. I'm one of the counsel for the Commission, and I've got</p> <p>11 I think just one question for you or at least one topic</p> <p>12 for you.</p> <p>13 Please could you be shown bundle H2/436. You are</p> <p>14 being given a hard copy of this document, Mr Ngai.</p> <p>15 A. Yes, I can see that.</p> <p>16 Q. In your witness statement, you refer to three gates,</p> <p>17 gates 1, 2 and 3, and you give them alternative</p> <p>18 descriptions as well; that is, the exit D, the Leighton</p> <p>19 bridge, and Cheong Wan Road; all right? Those are the</p> <p>20 three alternative descriptions you give.</p> <p>21 If you would be good enough to look at this plan,</p> <p>22 please, you will see, towards the top, some circles with</p> <p>23 numbers in; do you see 0/2/4/6?</p> <p>24 A. Yes.</p> <p>25 Q. And underneath you will see "Salisbury Road" and</p> |

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| <p>1 underneath that you will see a box with "Gate 1"; do you<br/>2 see that?<br/>3 A. Yes, I can see that.<br/>4 Q. Is that your gate 1, exit D?<br/>5 A. Correct.<br/>6 Q. Okay. If you go to the left of that, "Gate 1", and go<br/>7 over to the circles with the letters in, A/C/E, to the<br/>8 right of that you will see a box with "Gate 5" in it; do<br/>9 you see that?<br/>10 A. Yes, I see that.<br/>11 Q. Is that what you describe as gate 2 or the Leighton<br/>12 bridge?<br/>13 A. No, that's not it.<br/>14 Q. Right. So is that your gate 3 on the Cheong Wan Road?<br/>15 A. No, not.<br/>16 Q. Okay. You tell us where your gate -- first of all, tell<br/>17 us where your gate 2 is, please, on this plan.<br/>18 A. Wait a moment. Let me take a look.<br/>19 That's around here in the plan (indicating). Here<br/>20 (indicating).<br/>21 Q. Sorry?<br/>22 A. (In English) Here (indicating).<br/>23 Q. That's your gate 2, is it?<br/>24 A. Yes.<br/>25 Q. So the witness has pointed to the corner, approximately,</p>   | <p>1 MR CHANG: Mr Chairman, I am not Paul Shieh SC. I am<br/>2 Jonathan Chang. I appear for Leighton. I have some<br/>3 questions for this particular witness.<br/>4 CHAIRMAN: Yes, certainly.<br/>5 Cross-examination by MR CHANG<br/>6 MR CHANG: Mr Ngai, can you turn to your witness statement,<br/>7 bundle D2, paragraph 17. The second line, towards the<br/>8 end, we can see you saying "many sub-contractors<br/>9 blatantly ignored the system", being Leighton's<br/>10 electronic site access system. Can you see that?<br/>11 A. Yes, I see that.<br/>12 Q. I assume that would not include China Technology;<br/>13 correct?<br/>14 A. Yes, mmm.<br/>15 Q. Sorry, the mic can't pick up a nod, so do you agree or<br/>16 disagree? When you say many sub-contractors blatantly<br/>17 ignored Leighton's electronic site access system, that<br/>18 did not include workers from China Technology; correct?<br/>19 A. (Chinese spoken).<br/>20 Chinat not included.<br/>21 Q. In other words, China Technology would instruct its<br/>22 workers to abide by and follow the Leightons electronic<br/>23 site access system; correct?<br/>24 A. Correct.<br/>25 Q. May the witness be shown the transcript of Day 7,</p>  |
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| <p>1 of the dotted line, about 2 inches to the right of the<br/>2 words "Victoria Harbour", and has marked it on the plan.<br/>3 All right, that's your gate 2. Where is your<br/>4 gate 3, Mr Ngai?<br/>5 A. It's the same as "Gate 3" as marked on the plan.<br/>6 Q. All right. So your gate 3 is the "Gate 3"? All right.<br/>7 A. Correct.<br/>8 Q. Thank you very much.<br/>9 Now, this gate 2 that you have identified for us,<br/>10 was that something, to your knowledge, an entry and<br/>11 an exit point, that was there throughout the course of<br/>12 your involvement with this project?<br/>13 A. Yes, correct. Yes, this can be an access to the site<br/>14 itself.<br/>15 COMMISSIONER HANSFORD: Mr Ngai, was there a gate 4?<br/>16 A. I'm not aware of any gate 4. All I know is there are<br/>17 three gates, 1, 2 and 3.<br/>18 COMMISSIONER HANSFORD: Thank you.<br/>19 MR PENNICOTT: So we appear to be in the position that we<br/>20 are agreed there are three gates, two we agree their<br/>21 position, and one there is a difference between yourself<br/>22 and Ms Cho and indeed this plan. All right.<br/>23 Thank you very much, Mr Ngai. I have no further<br/>24 questions.<br/>25 WITNESS: Thank you very much.</p> | <p>1 page 45, lines 8 to 11. I will read it out so that the<br/>2 interpretation can be made to you. It's Mr Jason Poon's<br/>3 evidence on Leighton's site attendance or<br/>4 sign-in/sign-out records. Mr Poon's answer was:<br/>5 "Our personnel department at the end of each month<br/>6 would ask Leighton for the record. Usually the record<br/>7 would be provided at the beginning of the month for the<br/>8 purpose of paying wages."<br/>9 A. Yes.<br/>10 Q. So you accept China Technology received monthly records<br/>11 or site attendance records from Leighton, to enable<br/>12 China Technology to prepare its payroll?<br/>13 A. Yes.<br/>14 Q. Is it your evidence that the monthly records which China<br/>15 Technology received from Leighton, they are all<br/>16 inaccurate?<br/>17 A. (Chinese spoken).<br/>18 Agree.<br/>19 Q. If they are all inaccurate, how can China Technology<br/>20 rely on these site attendance records which they<br/>21 received from Leighton for the purpose of preparing<br/>22 payroll, to actually prepare the payroll?<br/>23 A. These records are inaccurate, but -- well, workers might<br/>24 have left or company, and we are paying them based on<br/>25 such records. So apart from such records, we have</p> |

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| <p>1 an internal WhatsApp group and the foremen will be<br/>2 reporting and recording the dates of attendance of the<br/>3 workers. So we will look at both of these records,<br/>4 because the Leighton records are inaccurate.<br/>5 Q. So, if I understand your evidence correctly, China<br/>6 Technology's own records will be a combination of the<br/>7 monthly records which you receive from Leighton and the<br/>8 additional information which you received through<br/>9 WhatsApp from the workers; correct?<br/>10 A. Correct.<br/>11 Q. So China Technology itself would have the most accurate<br/>12 site attendance record of all its employees; correct?<br/>13 A. Correct.<br/>14 Q. And it would be based on China Technology's own record<br/>15 that you prepared the payroll for your employees;<br/>16 correct?<br/>17 A. Yes, correct.<br/>18 Q. May the witness be shown bundle C8, page 5720. This is<br/>19 Leighton's site attendance records for China Technology<br/>20 employees, covering the period of the month of September<br/>21 2015.<br/>22 Mr Ngai, you can see Mr Poon Chuk Hung's name as the<br/>23 second-last entry at the bottom. Can you see that?<br/>24 A. Yes, I can see that.<br/>25 Q. Can you then go to 22 September, which is slightly</p> | <p>1 whether it is necessary for Mr Poon to provide the<br/>2 evidence, you have no evidence whatsoever to suggest he<br/>3 was on site?<br/>4 A. We don't have that information in the document.<br/>5 Q. I'm asking you about China Technology's own records,<br/>6 which you confirmed with the Commission you kept the<br/>7 most accurate records?<br/>8 A. No, because it's not necessary to keep track of<br/>9 Mr Poon's attendance because he's the boss.<br/>10 Q. So are you suggesting there is no record whatsoever of<br/>11 Mr Poon's presence on site at all, at any time?<br/>12 A. There is no record in any of my documents.<br/>13 Q. Now, can I ask you to turn to -- may the witness be<br/>14 shown 6172 of the same bundle.<br/>15 This is Leighton's site attendance record, covering<br/>16 the month of September 2017.<br/>17 A. Mmm.<br/>18 Q. These records are arranged in alphabetical order, so if<br/>19 Mr Poon's name were to be found, it should be found on<br/>20 this page, but we can see none; can you see that?<br/>21 A. I see the document.<br/>22 Q. Again, can I ask you this: does China Technology have<br/>23 any record in its own system to show that Mr Poon was<br/>24 on site on 16 September 2017?<br/>25 A. I would like to ask how come I don't have the full</p>  |
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| <p>1 towards the right. There is no entry recorded in this<br/>2 document for that day; correct?<br/>3 A. Mmm.<br/>4 Q. You will have to say "yes".<br/>5 A. Yes, on the paper.<br/>6 Q. Can I ask you this: China Technology has been unable to<br/>7 produce any document from its own, most accurate record,<br/>8 to show that Mr Poon was in fact on site on that day;<br/>9 correct?<br/>10 A. I'm not clear about that.<br/>11 Q. Sorry, when you say you are not certain, are you<br/>12 suggesting China Technology has such records or does not<br/>13 have such records?<br/>14 A. I'm not certain whether we have such records. Mr Poon<br/>15 is our boss. We don't have to pay his wage. So maybe<br/>16 we don't have a record because of that. Because the<br/>17 records were basically on the workers themselves.<br/>18 Q. Mr Poon never emailed or WhatsApped any records which he<br/>19 took from the sign-in logbook at the security guard post<br/>20 to your WhatsApp group, correct, for that particular<br/>21 day?<br/>22 A. No, no, no. He didn't have to do that.<br/>23 Q. Now, if I can summarise your evidence correctly. So far<br/>24 China Technology has no evidence to show that Mr Jason<br/>25 Poon was in fact on site on that day. Leaving aside</p>     | <p>1 document of this hand key? Let me take a look.<br/>2 Q. If you want to have a complete reading of the records,<br/>3 the records covering the month of September start from<br/>4 6170, and it ends at 6173.<br/>5 A. Yes. Could you put the question again, please?<br/>6 Q. For the month of September, there was no record of<br/>7 Mr Poon's attendance on site?<br/>8 A. Yes, according to the hand key record.<br/>9 Q. My question is: from China Technology's own internal<br/>10 record, there is also no evidence or record that Mr Poon<br/>11 was on site on 16 September 2017; correct?<br/>12 A. There is no evidence in the document.<br/>13 Q. For these two dates which I have covered with you,<br/>14 22 September 2015 and 16 September 2017, are you able to<br/>15 suggest any reason why Mr Poon could be on site on that<br/>16 day, according to China Tech's own internal records?<br/>17 A. Because Mr Poon has a habit of driving to the site, so<br/>18 he won't have a palm or a hand ID. He would just park<br/>19 his vehicle and he wouldn't have to go through the<br/>20 access point. And sometimes, if they want to access the<br/>21 Leighton office, they will have to pass through gate 2<br/>22 and they don't need to check in. Typically, he would<br/>23 have to go to the Leighton office every morning.<br/>24 Q. My question is: could you suggest any reason why Mr Poon<br/>25 was on site on those two days, according to China</p> |

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| <p>1 Technology's own internal records? I'm not asking you<br/>2 any reason why his attendance would not be captured in<br/>3 these documents.<br/>4 A. I don't know why he would be at the site on those two<br/>5 days. Typically, he goes to the site every day.<br/>6 There's no particular day that he has to go.<br/>7 Q. So your evidence is that these records from Leighton<br/>8 were inaccurate. Did China Technology ever make any<br/>9 attempts to correct them with Leighton?<br/>10 A. No. Leighton had its own system and we received these<br/>11 PDFs from them. There's no way we could amend them.<br/>12 Q. China Technology received these records from Leighton on<br/>13 a monthly basis?<br/>14 A. Yes.<br/>15 Q. China Technology's stance is that these records were<br/>16 inaccurate?<br/>17 A. Yes.<br/>18 Q. So did China Technology make any attempt to correct<br/>19 these records with Leighton, at any time?<br/>20 A. Well, internally, we created a WhatsApp group, and we<br/>21 wanted to track the workers' work hours more accurately,<br/>22 because the palm or the hand record is only for our<br/>23 salary record keeping.<br/>24 Q. So it's China Technology's evidence that China<br/>25 Technology never, upon receiving these records, never go</p>  | <p>1 giving you the correct information?<br/>2 A. Could you ask the question again?<br/>3 Q. Your evidence is, if I understand correctly, China<br/>4 Technology will not verify with Leighton these<br/>5 additional attendance records which your workers<br/>6 submitted through WhatsApp. My question is, if China<br/>7 Technology did not verify these additional information<br/>8 with Leighton, how would China Technology be able to<br/>9 confirm that these records provided by your workers were<br/>10 accurate?<br/>11 A. Well, I should put it this way. The WhatsApp group<br/>12 doesn't have participants of the workers. It's just the<br/>13 foremen and managers. So workers would provide<br/>14 information to the foremen and the foremen would submit<br/>15 that information in the WhatsApp group. So, if the<br/>16 company has faith in the manager, we will trust the<br/>17 information they provide.<br/>18 Q. Can you tell us how would the foremen verify the<br/>19 information?<br/>20 A. The foremen would see whether they are working, the<br/>21 location where they are working, and that would be the<br/>22 confirmation process.<br/>23 Q. On a daily basis?<br/>24 A. Yes.<br/>25 Q. Is there any document to record such daily verification</p> |
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| <p>1 back to Leighton and say, "Ah, these entries were not<br/>2 inaccurate [sic]", and ask Leighton to explain or<br/>3 update?<br/>4 A. No. These palm records have always been inaccurate, and<br/>5 a lot of people might not check in with the card and go<br/>6 work on the site.<br/>7 CHAIRMAN: Can I ask, how did you ensure accuracy for<br/>8 purposes of paying wages, then?<br/>9 A. First of all, we would use this as a reference, as<br/>10 a basic reference, and then in our WhatsApp group the<br/>11 foremen would record which workers had overtime or<br/>12 special circumstances, and we would combine the two of<br/>13 them and come up with a salary payment.<br/>14 MR CHANG: So you just accept whatever your workers told you<br/>15 over the WhatsApp group as their site attendance record;<br/>16 correct? Is that your evidence?<br/>17 A. Yes, because if they have some card problems, they will<br/>18 take pictures, they will put their signature at the<br/>19 entry point, at the security point, and they would<br/>20 submit that for reference.<br/>21 Q. And China Tech would not review these additional<br/>22 information with Leighton; is that your evidence?<br/>23 A. Correct.<br/>24 Q. Is there any particular reason why China Technology did<br/>25 not do so, so as to verify whether your own workers were</p> | <p>1 by the foremen?<br/>2 A. I'm not sure if the foremen have these documents.<br/>3 I don't.<br/>4 Q. Does China Technology keep any record of this kind of<br/>5 daily verification by its foremen?<br/>6 A. No.<br/>7 Q. Can I refer you to Ms Emily Cho's second witness<br/>8 statement. It's in bundle C34, page 26645. The English<br/>9 version starts from 26647.<br/>10 Have you had a chance to go through this witness<br/>11 statement before today?<br/>12 A. Not the second witness statement.<br/>13 Q. Can I refer you to paragraph 4 of this witness<br/>14 statement. You can read Chinese; correct?<br/>15 A. Yes, I can read Chinese.<br/>16 Q. Can I trouble you to read to yourself the whole of<br/>17 paragraph 4, where Ms Cho explains the colouring in<br/>18 Leighton's site attendance records and the work hours.<br/>19 A. Yes, I'm done.<br/>20 Q. I'm asking you to read this paragraph because in<br/>21 paragraph 15 of your witness statement, you questioned<br/>22 the records when you queried the number in the "Work<br/>23 day" column doesn't match the monthly entries, and there<br/>24 is also the query about the markings in red.<br/>25 My question is, having read paragraph 4 of Ms Cho's</p>   |

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| <p>1 second witness statement, do you accept her explanation<br/>2 to be accurate?<br/>3 A. It's inaccurate.<br/>4 Q. Can you tell the Commission why and which part of her<br/>5 explanation do you not accept as accurate?<br/>6 A. Could you take November 2015 palm print? Otherwise,<br/>7 it's very hard to explain to the Commission.<br/>8 Q. I can refer you to Mr Poon's site attendance record<br/>9 which was what Ms Cho was addressing. That's at<br/>10 bundle C8/5720, the second-last entry at the bottom,<br/>11 "Poon Chuk Hung". Can you see that?<br/>12 A. Yes, I see it.<br/>13 Q. Ms Cho explained first why certain entries were marked<br/>14 in red. She says:<br/>15 "The system identifies time entries in red for<br/>16 persons who spent ten hours or more on site, but arrive<br/>17 later (ie after 8 am) or departed earlier (ie before<br/>18 6 pm) than the normal working hours."<br/>19 That was Ms Cho's explanation; do you agree or<br/>20 disagree?<br/>21 A. I don't agree. Let's take a look at Mr Poon Chuk Hang's<br/>22 record on the 30th. You see there is 8:12 but that's<br/>23 not in red; right?<br/>24 Q. Ms Cho's evidence or explanation is that entries which<br/>25 are marked in red would be for those who spent ten hours</p>   | <p>1 system worked, correct, insofar as these records are<br/>2 concerned?<br/>3 A. Well, you can say that.<br/>4 Q. Now, on the number of work days, again Ms Cho explained,<br/>5 for a person spending over ten hours on site, the system<br/>6 will classify it as one work day; five to ten hours will<br/>7 be classified as half work day; and under five days is<br/>8 classified as absent.<br/>9 Do you have any evidence or basis to suggest<br/>10 Ms Cho's explanation is incorrect?<br/>11 A. I am not certain about her calculation method. I've<br/>12 never paid any attention to the work days. I just put<br/>13 in the number of hours worked into our record to prepare<br/>14 the payroll, and I never paid any attention to how she<br/>15 calculated the work days.<br/>16 Q. Your witness statement queried this document recording<br/>17 Mr Poon's number of work days as 9.5, as we could see<br/>18 from the entry towards the right-most -- the fourth<br/>19 column.<br/>20 You say it can't be nine and a half days because you<br/>21 yourself counted 15 and a half.<br/>22 Ms Cho explained why Mr Poon's site attendance<br/>23 record for September correctly showed nine and a half<br/>24 work days. Do you have any basis or evidence to suggest<br/>25 that she was wrong?</p>  |
| Page 82   | Page 84  |
| <p>1 or more on site.<br/>2 On 30 September, Mr Poon arrived at 8:12 and left at<br/>3 6 pm. That falls short of ten hours.<br/>4 A. And what about the 16th? He arrived at 8:48 and then he<br/>5 left at 18:46, so that's less than ten hours.<br/>6 Q. That's two minutes short of ten hours.<br/>7 A. (Chinese spoken).<br/>8 Q. Mr Ngai, Ms Cho was explaining how the system worked in<br/>9 colouring the entries. My only question is do you have<br/>10 any basis to suggest Ms Cho's explanation was<br/>11 inaccurate; "yes" or "no"?<br/>12 A. I have to look at it, because I've just read Ms Cho's<br/>13 second witness statement so I need some time to take<br/>14 a look.<br/>15 Q. But as to how the system works, namely, as explained by<br/>16 Ms Cho, ten hours or more and the different arriving<br/>17 times would show a red entry, this mechanism, is there<br/>18 anything you can suggest to rebut or disagree with<br/>19 Ms Cho's explanation?<br/>20 A. When I prepared the payroll, I studied into the red<br/>21 parts and I asked why some parts were highlighted in red<br/>22 and others not. I don't agree with her, but I need time<br/>23 to look further into it. Going by my experience,<br/>24 I query her marking system.<br/>25 Q. In any event, you have no idea how Leighton's computer</p> | <p>1 A. Going by Chinat's calculation method, this was a wrong<br/>2 figure.<br/>3 Q. How would China Technology compute the work days of<br/>4 Mr Poon?<br/>5 A. Mr Poon's work day, he was the boss -- we didn't have to<br/>6 calculate his work days. For a usual worker, we will go<br/>7 by the palm recognition system, and then we calculated<br/>8 the number of days he worked and came up with the<br/>9 payroll. We didn't go by the half-day or full-day<br/>10 formula as suggested by Ms Cho. We counted the number<br/>11 of work hours.<br/>12 Q. So Ms Cho explains this is how Leighton's system worked.<br/>13 Do you have any evidence or basis to say she was wrong?<br/>14 A. I don't have any basis. And I don't understand why<br/>15 a work shift of less than five hours would be considered<br/>16 absent. I think that doesn't sound right to any worker.<br/>17 If they have worked for three hours, then those three<br/>18 hours should be counted in preparing the payroll.<br/>19 Q. China Technology has received monthly records like this<br/>20 from Leighton; correct?<br/>21 A. Correct.<br/>22 Q. Including this one which we are looking at?<br/>23 A. Well, it should be the one in 2015 and not 2018.<br/>24 Q. The copy which China Technology received for the month<br/>25 of September 2015, insofar as Mr Poon is concerned, is</p> |

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| <p>1 identical to this document; correct?</p> <p>2 A. I have to get my own copy to take a look first.</p> <p>3 Q. D2/1136. Can you see the code 5097?</p> <p>4 A. Yes.</p> <p>5 Q. That's for Mr Poon, and the number of work days, nine</p> <p>6 and a half; can you see that?</p> <p>7 A. Yes, I see that.</p> <p>8 Q. Upon receiving this from Leighton, did China Technology</p> <p>9 ask Leighton why did it record Mr Poon's attendance as</p> <p>10 nine and a half work days?</p> <p>11 A. No. When we made our own calculation, we would not pay</p> <p>12 attention to the work days, and neither did we have to</p> <p>13 calculate the work days of Mr Poon, so we didn't pay</p> <p>14 attention to that.</p> <p>15 Now, in 2016, we have 11 pages, and then I don't</p> <p>16 know why then for subsequent years we have those pages.</p> <p>17 So, I don't know, maybe there are some inaccuracies</p> <p>18 there.</p> <p>19 Q. I am focusing on the entry for Mr Poon for September</p> <p>20 2015. Is it correct that despite this record which you</p> <p>21 received from Leighton, China Technology also did not</p> <p>22 seek to correct any entries for Mr Poon with Leighton</p> <p>23 for this month?</p> <p>24 A. No, we didn't do that. Mr Poon, the boss, he might</p> <p>25 drive in and out of the site, so the record on -- the</p>  | <p>1 Mr Poon's salary, so I won't need to verify that with</p> <p>2 Leighton.</p> <p>3 Q. Leaving aside whether it's necessary for him to do so,</p> <p>4 I just want an answer as to whether factually Mr Poon or</p> <p>5 China Technology ever verified or queried with Leighton</p> <p>6 these entries from 19 to 28 September 2015, as we can</p> <p>7 see from this document.</p> <p>8 A. You are referring to Mr Poon, all the workers, or any --</p> <p>9 Q. For Mr Poon.</p> <p>10 A. No. I repeat once again, it's not necessary.</p> <p>11 So if a person doesn't need his salary to be</p> <p>12 calculated, there's no reason for me to do such</p> <p>13 a calculation.</p> <p>14 Q. Did China Technology ever tell Leighton there is no need</p> <p>15 to provide the site attendance record of Mr Poon at all?</p> <p>16 A. No.</p> <p>17 MR CHANG: Thank you, Mr Chairman. Thank you.</p> <p>18 COMMISSIONER HANSFORD: Can I ask a question at this point,</p> <p>19 Mr Ngai. This is really just for my interest. Did you</p> <p>20 pay your workers by the hour or by the day?</p> <p>21 A. Daily wage, and we divided that by ten hours, and if</p> <p>22 they had worked three hours then we would give them 0.3</p> <p>23 of a day's wage.</p> <p>24 COMMISSIONER HANSFORD: Right. So are you telling me that</p> <p>25 you added up all of their hours during a week and then</p> |
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| <p>1 palm recognition record was not right, and on the 29th</p> <p>2 there was no entry. And then on 5740 there was a worker</p> <p>3 entry which was mistaken. So we didn't revise this</p> <p>4 thing and we would look into our own internal records</p> <p>5 and then make amendments for payroll preparation</p> <p>6 purpose.</p> <p>7 Q. Are you suggesting, between the 20th -- in fact between</p> <p>8 19 September all the way to 28 September, these dates</p> <p>9 where we can see no entry for Mr Poon, he drove to work</p> <p>10 every day, and therefore the system did not capture his</p> <p>11 attendance? Is that your evidence?</p> <p>12 A. Mr Poon usually drove to the site, but for this</p> <p>13 particular period I'm not so sure.</p> <p>14 Q. Well, if Mr Poon usually drives to site, as you say, can</p> <p>15 you explain why we still see entries for the period of</p> <p>16 1 September all the way to 18 September on this</p> <p>17 document?</p> <p>18 A. I'm not -- Mr Poon, I couldn't offer an explanation.</p> <p>19 Q. Now, seeing that there is a block of what you call</p> <p>20 missing entries or non-entries for 19 to 28 September,</p> <p>21 China Technology or Mr Poon took no steps to verify or</p> <p>22 correct this with Leighton; correct?</p> <p>23 A. First of all, he's the boss. He's not an employee, so</p> <p>24 he doesn't need to verify anything with Leighton. And</p> <p>25 when we do a payroll, we don't have to calculate</p> | <p>1 divided that by ten, and then paid them that number of</p> <p>2 days? Is that the way you did it?</p> <p>3 A. Well, we calculated daily. There's a daily wage. Let's</p> <p>4 say he starts at 8.00 and he finishes at 12.00, so that</p> <p>5 will give him 0.4 of a day's wage.</p> <p>6 COMMISSIONER HANSFORD: I see. So on every day he works,</p> <p>7 you determined the hours that he worked and then divided</p> <p>8 that by ten -- and then for each hour he worked, that</p> <p>9 would be a tenth of a day's wage; is that correct?</p> <p>10 A. Yes, roughly.</p> <p>11 COMMISSIONER HANSFORD: Thank you.</p> <p>12 MS CHONG: No questions from Fang Sheung.</p> <p>13 MR KHAW: No questions from the government.</p> <p>14 MR BOULDING: No questions from MTR, sir.</p> <p>15 Re-examination by MR TO</p> <p>16 MR TO: I just have two questions to re-examine, if that's</p> <p>17 okay.</p> <p>18 Mr Ngai, just two questions.</p> <p>19 A. Yes.</p> <p>20 Q. These touch on the questions that were raised before.</p> <p>21 The first question: how many times has Leighton</p> <p>22 approached you about the sign-in/sign-out records in</p> <p>23 terms of whether they were accurate?</p> <p>24 A. In my recollection, I don't think they contacted me</p> <p>25 regarding this.</p>  |

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| <p>1 Q. My second question is: according to Ms Emily Cho in her<br/>2 second witness statement, in her report it says five<br/>3 hours is classified as absent?<br/>4 A. Yes, I can see that.<br/>5 Q. What will happen if you don't pay your workers according<br/>6 to the Leightons in and out report?<br/>7 A. They will deem it as wages in arrears. They will go to<br/>8 the Labour Department and they will take us to court.<br/>9 So if they work four hours, we have to pay them four<br/>10 hours of wages. We have to pay in full.<br/>11 MR TO: I don't have any further questions.<br/>12 Chairman, Commissioner, that's me finished.<br/>13 CHAIRMAN: Thank you.<br/>14 WITNESS: (In English) Thank you.<br/>15 COMMISSIONER HANSFORD: I'm still struggling actually on<br/>16 Mr To's last question and the answer that went with it.<br/>17 The question you were asked, and I've got it on the<br/>18 screen:<br/>19 "What will happen if you don't pay your workers<br/>20 according to the Leightons in and out report?"<br/>21 And your answer was:<br/>22 "They will deem it as wages in arrears."<br/>23 Who will deem it as wages in arrears?<br/>24 A. The workers will go to the Labour Department. They will<br/>25 say that their wages are incorrect. The Labour</p>  | <p>1 So I thought this might be an opportune moment, just<br/>2 in case you and Prof Hansford haven't looked at it yet,<br/>3 to show you two documents which might help with some of<br/>4 the background. I do that because -- I do it now and<br/>5 I haven't done it before because yesterday, I think last<br/>6 evening, we were helpfully given a document by Leighton,<br/>7 and that is the guideline 121 that I had been asking<br/>8 about previously.<br/>9 Before we go there, however, could I ask you,<br/>10 please, to be shown a document at B3/1615. Bundle B3,<br/>11 page 1615. Sir, I'll have to read this off the screen<br/>12 because I don't have a hard copy.<br/>13 Sir, this is part of the MTR's project integrated<br/>14 management system, also known as PIMS. It is headed,<br/>15 "Guidelines for raising contract-level works NCR", and<br/>16 clause 1 or paragraph 1 of this document defines<br/>17 an NCR -- this is the MTR definition:<br/>18 "A Works NCR is to report a non-conforming product<br/>19 which does not fulfil the specified requirements of<br/>20 a contract. The non-conforming product shall be dealt<br/>21 with before proceeding to the next stage of work or<br/>22 before covering up. A Works NCR is raised where the<br/>23 non-conforming product is significant and that<br/>24 corrective and preventive actions are required to<br/>25 prevent recurrence of similar nature."</p> |
| <p>1 Department will first come to us, they will also go to<br/>2 the main contractor, Leightons, and they will look at<br/>3 the palm ID and see whether we have paid accordingly.<br/>4 COMMISSIONER HANSFORD: Okay. Now I think I understand.<br/>5 What you are saying is if you had followed Leighton's<br/>6 system of five hours or less being absent, if you had<br/>7 followed that, and on that basis not paid your workers,<br/>8 then they would go to the Labour Department; is that<br/>9 your answer?<br/>10 A. Totally correct.<br/>11 COMMISSIONER HANSFORD: Now I understand. Thank you.<br/>12 MR TO: Thank you, Professor.<br/>13 CHAIRMAN: Good. Thank you very much indeed. Your evidence<br/>14 is now completed. Thank you for your assistance.<br/>15 WITNESS: (In English) Thank you, Chairman.<br/>16 (The witness was released)<br/>17 MR PENNICOTT: Sir, the next witness is Mr Zervaas.<br/>18 CHAIRMAN: Yes.<br/>19 MR PENNICOTT: Before we call him in, can I just mention one<br/>20 matter? Sir, not necessarily with Mr Zervaas, but<br/>21 I don't rule it out entirely, but certainly with<br/>22 a number of the forthcoming Leighton witnesses, we will<br/>23 inevitably be going back to the topic of NCRs, and in<br/>24 particular, I suspect, NCR157, with which we are<br/>25 of course very familiar.</p> | <p>1 So one gets assistance from that definition as to<br/>2 the circumstances in which the MTR at least think an NCR<br/>3 should be issued. That is something that is<br/>4 significant, and the corrective and preventive actions<br/>5 are required.<br/>6 Paragraph 2 gives examples: pile out of specified<br/>7 tolerance; major concrete defects, honeycomb defects and<br/>8 so forth; missing rebars in structures per design<br/>9 requirements; non-approved material incorporated in the<br/>10 work.<br/>11 Then paragraph 3 gives examples of where Works NCRs<br/>12 should not be raised, and a list is given -- I don't<br/>13 read them out -- then if we could scroll down please,<br/>14 "Points to note when raising Works NCR":<br/>15 "The contract management team should encourage<br/>16 contractors raising their own Works NCR in accordance<br/>17 with their own QA/QC procedure. This is a more<br/>18 efficient way than the contract manager raising the NCR<br/>19 to the contractors. CM team shall obtain a copy of the<br/>20 contractor's NCR to maintain oversight".<br/>21 Of course we know that NCR157 was indeed passed by<br/>22 the MTR to Leighton. We saw that when we were speaking<br/>23 to Mr Plummer.<br/>24 That's the MTR position, as it were. I haven't read<br/>25 it all out.</p>  |

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| <p>Page 93</p> <p>1 COMMISSIONER HANSFORD: Mr Pennicott, before we move on, can<br/>2 I understand, this is NCR guidelines to MTR staff, as<br/>3 opposed to NCR guidelines to MTR's contractors?<br/>4 MR PENNICOTT: That's my understanding, sir, yes: the people<br/>5 at MTR who may be responsible for the issuing of NCRs.<br/>6 COMMISSIONER HANSFORD: Fine. Thank you.<br/>7 MR PENNICOTT: And, sir, could I then take you to the<br/>8 document that we were given yesterday. I'm afraid --<br/>9 I know it's in C35, I know that's item 159, but I'm<br/>10 afraid I don't have the page number. But it seems to be<br/>11 on the screen. Thank you very much.<br/>12 So, sir, I understand this to be guideline 121, and<br/>13 I'm sure it says that somewhere but I can't immediately<br/>14 see it. This, as I say, was received yesterday. It's<br/>15 called "Non-conformance report classification".<br/>16 "Purpose<br/>17 To describe the method of classifying defective work<br/>18 non-conformances.<br/>19 Classification methods<br/>20 Three methods are used to classify the<br/>21 non-conformance report, those methods are described<br/>22 below.<br/>23 1. Party responsible for causing defect" -- I don't<br/>24 read it all out. Then:<br/>25 "2. Causes of defective work".</p>   | <p>Page 95</p> <p>1 COMMISSIONER HANSFORD: Okay. Obviously I can look at it<br/>2 myself, but in NCR157 you tell us the subsidiary cause<br/>3 was noted as personnel.<br/>4 MR PENNICOTT: I'm just doing it from recollection.<br/>5 COMMISSIONER HANSFORD: Not methodology?<br/>6 MR PENNICOTT: No, sir.<br/>7 COMMISSIONER HANSFORD: I suppose it could have been either<br/>8 MR PENNICOTT: Yes.<br/>9 COMMISSIONER HANSFORD: Okay.<br/>10 MR PENNICOTT: If we can scroll down a little bit, please --<br/>11 yes, if we could pause there -- sir, if you look at the<br/>12 penultimate example there -- it's quite interesting that<br/>13 you raised the point:<br/>14 It says:<br/>15 "Congested reinforcing bars" -- so this is the<br/>16 defective work description example -- "in a column<br/>17 prevented proper vibration of concrete during placing.<br/>18 Later, when removing the formwork, honeycombed concrete<br/>19 was found at a number of locations."<br/>20 Main cause, workmanship; subsidiary cause,<br/>21 methodology.<br/>22 In that case, one can see perhaps the difference<br/>23 between a congested reinforcing bar and its consequence,<br/>24 and the 157 situation where you have rebar not screwed<br/>25 in and/or cut, and not described as methodology but</p> |
| <p>Page 94</p> <p>1 If you could scroll down, please, a matrix is given<br/>2 there, and again I don't propose to read it all out at<br/>3 this stage.<br/>4 If you could scroll down again, please.<br/>5 Then we have the non-conformance report<br/>6 classification, and the main causes are listed there:<br/>7 survey, documentation, workmanship, material handling,<br/>8 manufacture, identification, design and other. Then<br/>9 subsidiary causes: personnel, material, plant and<br/>10 equipment, and so forth.<br/>11 You will recall that on NCR157, the primary cause,<br/>12 whatever it is defined as -- sorry, go up again<br/>13 please -- the main cause was described as workmanship<br/>14 and the subsidiary cause I think was personnel.<br/>15 So this is, as it were, the Leightons<br/>16 classification. What it doesn't do, it seems to me --<br/>17 and I don't know if there is anything else Leightons<br/>18 have -- it doesn't, as per the MTR document that we<br/>19 looked at, doesn't define the circumstances in which<br/>20 an NCR might be issued, ie something that's significant<br/>21 or something that's preventive, and so forth. It really<br/>22 is just a description of how one fills in the form and<br/>23 how one classifies the different causes, and so forth.<br/>24 Sir, I am helpfully told that the bottom right of<br/>25 this bottom is EDL121.</p> | <p>Page 96</p> <p>1 described as personnel.<br/>2 COMMISSIONER HANSFORD: Perhaps it's rather subjective as to<br/>3 whether it's the methodology or personnel. Probably<br/>4 a bit of both, actually.<br/>5 MR PENNICOTT: One can see that. I thought that might be<br/>6 useful at this stage because we are bound to be coming<br/>7 back to this NCR in due course.<br/>8 COMMISSIONER HANSFORD: I think that's very useful, thank<br/>9 you.<br/>10 MR PENNICOTT: With that, Mr Zervaas.<br/>11 MR WILKEN: Good afternoon, Chairman and Professor. I note<br/>12 it's 3.15. I'm happy to start now with Mr Zervaas. I'm<br/>13 now doing Mr Pennicott's mistake for him.<br/>14 CHAIRMAN: And I'm paying special attention.<br/>15 Yes, that might be an idea.<br/>16 MR PENNICOTT: Yes, I think so.<br/>17 MR WILKEN: Let's start with Mr Zervaas.<br/>18 CHAIRMAN: Ten minutes? Sorry, 15 minutes.<br/>19 (3.16 pm)<br/>20 (A short adjournment)<br/>21 (3.32 pm)<br/>22 CHAIRMAN: Yes.<br/>23 MR WILKEN: Mr Chairman and Professor, we now move to the<br/>24 evidence of Mr Zervaas.<br/>25 Mr Zervaas, can you give your full name to the</p>  |



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| <p>1 tribunal, please.</p> <p>2 WITNESS: Anthony Peter Zervaas.</p> <p>3 MR ANTHONY PETER ZERVAAS (sworn)</p> <p>4 Examination-in-chief by MR WILKEN</p> <p>5 MR WILKEN: You have given four statements to this Inquiry.</p> <p>6 Can I take you to them in turn, please. The first is at</p> <p>7 C12/7673. Do you see there the first page of your first</p> <p>8 witness statement?</p> <p>9 A. Correct.</p> <p>10 Q. Then if you go to 7680, is that your signature?</p> <p>11 A. Yes.</p> <p>12 Q. And it's dated 13 September 2018?</p> <p>13 A. Mm-hmm.</p> <p>14 Q. Can you go now, please, to C32/24656. Is that the first</p> <p>15 page of your second witness statement?</p> <p>16 A. Yes.</p> <p>17 Q. If you go to 24660, is that your signature?</p> <p>18 A. Yes.</p> <p>19 Q. And it's dated 15 October 2018?</p> <p>20 A. Correct.</p> <p>21 Q. If you can then be taken, please, to C34/26496, is that</p> <p>22 the first page of your third witness statement?</p> <p>23 A. Yes.</p> <p>24 Q. Then if you can go to 26504, is that your signature?</p> <p>25 A. Correct.</p> | <p>1 I get to ask you some questions first.</p> <p>2 A. Yes.</p> <p>3 Q. Others will follow. As Mr Wilken rightly says, if the</p> <p>4 Chairman or Commissioner wish at any stage to ask you</p> <p>5 questions, they will, and when we get to the end of that</p> <p>6 process, if Mr Wilken feels it necessary or appropriate</p> <p>7 to ask you any further questions, then he gets</p> <p>8 an opportunity to do so.</p> <p>9 A. Okay.</p> <p>10 Q. Now, Mr Zervaas, you I think became project director on</p> <p>11 behalf of Leighton in October 2016; is that right?</p> <p>12 A. Yes, correct.</p> <p>13 Q. And you took over from Mr Plummer?</p> <p>14 A. Correct.</p> <p>15 Q. Was there a short sort of handover period between the</p> <p>16 two of you?</p> <p>17 A. Yes. It was four days, from memory.</p> <p>18 Q. Four days?</p> <p>19 A. Yeah.</p> <p>20 Q. Can I ask you, when that sort of handover takes place,</p> <p>21 when you replace somebody at that sort of level of</p> <p>22 project director, what steps did you take to familiarise</p> <p>23 yourself with the project and understand where it had</p> <p>24 reached and what issues may have arisen, and so forth?</p> <p>25 How did you go about that?</p>   |
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| <p>1 Q. Is that dated 29 October 2018?</p> <p>2 A. Yes.</p> <p>3 Q. Can you please be taken to C35/26574. Is that the first</p> <p>4 page of your fourth witness statement?</p> <p>5 A. Yes.</p> <p>6 Q. Then if you go, please, to 26576, is that your</p> <p>7 signature?</p> <p>8 A. Yes.</p> <p>9 Q. Is that dated 5 November 2018?</p> <p>10 A. Yes.</p> <p>11 Q. That's the evidence which you wish to advance to this</p> <p>12 Commission?</p> <p>13 A. Yes.</p> <p>14 Q. Is it true and correct, as far as you are concerned?</p> <p>15 A. Correct, yes.</p> <p>16 Q. Is there anything you want to add or alter to it?</p> <p>17 A. No.</p> <p>18 MR WILKEN: Mr Zervaas, if you wait there, please, various</p> <p>19 counsel and members of the Commission will ask you some</p> <p>20 questions, starting with the man to my left,</p> <p>21 Mr Pennicott.</p> <p>22 WITNESS: Okay.</p> <p>23 Examination by MR PENNICOTT</p> <p>24 MR PENNICOTT: Good afternoon, Mr Zervaas. As Mr Wilken has</p> <p>25 indicated, I'm one of the counsel to the Commission, and</p>                 | <p>1 A. I had a -- Malcolm gave me a download on the world as he</p> <p>2 saw it. I also reported to an operations manager at the</p> <p>3 time and he also gave me a download on how he saw the</p> <p>4 status of the project. Then I spoke to some of the key</p> <p>5 staff on the project at the time, just to, you know, get</p> <p>6 people's views and then form my own view.</p> <p>7 Q. Right. Where had you come from?</p> <p>8 A. I had been working the previous three and a half/four</p> <p>9 years in Macau. I was working on a casino project in</p> <p>10 Macau.</p> <p>11 Q. Right. So, when you joined the project in October 2016,</p> <p>12 this was your first ever involvement with the project;</p> <p>13 you had no prior involvement with it?</p> <p>14 A. Never, ever.</p> <p>15 Q. All right.</p> <p>16 Could I ask you, please, to be shown an email which</p> <p>17 is at C12/7922.</p> <p>18 Can we go to the next page -- thank you very much.</p> <p>19 This is the email of 6 January 2017 that was sent to</p> <p>20 you by Mr Poon and also sent to Joe Tam?</p> <p>21 A. Correct.</p> <p>22 Q. Could we then go to 7939. This is the follow-up email</p> <p>23 that Mr Poon sent on 7 January 2017. He says:</p> <p>24 "Dear Anthony,</p> <p>25 We had investigated internally and it is quite clear</p> |

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| <p>1 that your site in-charge Khyle Roger was well aware and<br/>2 directing these activities."<br/>3 Do you see that?<br/>4 A. Yes, I see that.<br/>5 Q. Mr Rodgers told us the other day that he had never seen<br/>6 that email. Is he right?<br/>7 A. Yes. I don't recall talking to him about it or issuing<br/>8 that email to him.<br/>9 Q. You've anticipated my next question. He didn't see the<br/>10 email.<br/>11 A. No.<br/>12 Q. And he also told us that you didn't speak to him about<br/>13 it, and it sounds as though you agree with that?<br/>14 A. Yes.<br/>15 Q. Why did you feel it, if you did -- let me ask the direct<br/>16 question: why didn't you speak to him about it?<br/>17 A. I had the previous day contacted my superior, which was<br/>18 Paul Freeman at the time, and we decided that it was<br/>19 best that we get an independent investigation underway<br/>20 which involved -- which was led by our head of<br/>21 engineering, Mr Stephen Lumb. So I wanted that<br/>22 investigation to be independent and I didn't want to<br/>23 influence the investigation by talking to anyone about<br/>24 it.<br/>25 Secondly, at the time that email was sent, it was</p>   | <p>1 investigation -- you've given his name already -- or one<br/>2 of his assistants a copy of this email so that they<br/>3 could speak to the person?<br/>4 A. I don't recall giving that email to Mr Lumb. I don't<br/>5 know who I gave it to, if anybody.<br/>6 MR PENNICOTT: That's a point I was going to take up with<br/>7 you, Mr Zervaas. Could you please look at paragraph 13<br/>8 of your witness statement. That's 7675. That's your<br/>9 first witness statement.<br/>10 A. Yes.<br/>11 Q. You say:<br/>12 "Given the serious allegations made by Poon,<br/>13 I immediately forwarded that email to Michael Fu of<br/>14 MTRCL ..."<br/>15 Now, let's pause there for the moment. That<br/>16 email -- now, I've shown you two; there's 6 January and<br/>17 7 January -- which email are you referring to?<br/>18 A. 6 January.<br/>19 Q. Okay. Then you go on:<br/>20 "... copying my superiors at the time, Paul Freeman<br/>21 (operations manager ...) and Stephen Lumb (head of<br/>22 engineering) ... Leighton mobilised Stephen Lumb and his<br/>23 team to come to site with the team to conduct<br/>24 an investigation."<br/>25 So you say that you gave Mr Lumb, amongst others,</p>                           |
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| <p>1 clear that Mr Poon was trying to apply commercial<br/>2 pressure during a commercial dispute. That's how I felt<br/>3 at the time. Okay?<br/>4 Q. It just seems slightly curious, Mr Zervaas, that whether<br/>5 he's right or whether he's wrong, Mr Poon has named<br/>6 a particular individual in an email, so he's pinpointed<br/>7 somebody, if you like, involved in the sort of<br/>8 malpractices he was talking about at the time, and you<br/>9 didn't think it appropriate to speak to him. I just<br/>10 point it curious, Mr Zervaas.<br/>11 A. As I said, I felt it necessary to make sure the<br/>12 investigation was independent, and I left that up to<br/>13 Stephen Lumb and his team.<br/>14 Q. Because of course the problem that arose -- I say<br/>15 "problem" -- one of the consequences of you not speaking<br/>16 to Mr Rodgers, it also appears that Mr Lumb never spoke<br/>17 to Mr Rodgers either, so something rather got lost in<br/>18 the investigation, that is the one person that was named<br/>19 was never spoken to. Again, don't you find that rather<br/>20 odd?<br/>21 A. No, not at the time, no. That was the decision -- that<br/>22 was the decision I made, and the day before I'd asked<br/>23 for the investigation to take place, and I stayed<br/>24 removed from the investigation.<br/>25 CHAIRMAN: Did you give to whoever was doing the</p> | <p>1 the first email, if you like --<br/>2 A. Yes.<br/>3 Q. -- the 6 January, but you didn't give him the 7 January;<br/>4 is that the position?<br/>5 A. I don't recall sending anyone -- sending anyone that<br/>6 email on the 7th. I don't recall having done that.<br/>7 Q. Okay. Perhaps we could just have a look at what Mr Lumb<br/>8 says about that. We will need to find his first witness<br/>9 statement, at C20112, C27/20112.<br/>10 What he says is this, at paragraph 15 -- this is<br/>11 Mr Lumb speaking, Mr Zervaas:<br/>12 "I was told that there had been an allegation made<br/>13 in an email (I do not recall if I was specifically told<br/>14 that it came from Jason Poon), which attached various<br/>15 photographs."<br/>16 Now, it was the second email, 7 January, that<br/>17 attached the photographs; yes?<br/>18 A. I'd need to check that.<br/>19 Q. Okay. Assume I'm right.<br/>20 A. Okay.<br/>21 Q. "I was shown the photographs [says Mr Lumb] (but not the<br/>22 email). I cannot now recall exactly what was shown in<br/>23 the photographs, but I do recall that they showed the<br/>24 cut end of a threaded reinforcement bar."<br/>25 Do you see? Obviously I'll get the opportunity of</p> |

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| <p>1 asking Mr Lumb --</p> <p>2 A. Yes.</p> <p>3 Q. -- at some point what it was he had in his possession.</p> <p>4 But so far as you're concerned, as I understand it, you</p> <p>5 sent him the email of the 6th, you have no recollection</p> <p>6 of sending him the email of the 7th, but if I'm right</p> <p>7 about the photographs, somebody gave him the photographs</p> <p>8 attached to the 7 January email?</p> <p>9 A. Yes. I don't -- I'm not clear on the 7th email; okay?</p> <p>10 Q. All right. We'll come back to Mr Lumb's report, or</p> <p>11 review report, a little later on, but I just wanted to</p> <p>12 try to clear the decks on those emails to start with,</p> <p>13 but we will come back to Mr Lumb's report later.</p> <p>14 Could I then switch to September 2017 --</p> <p>15 A. Mm-hmm.</p> <p>16 Q. -- and the meetings that you had with Mr Poon to settle</p> <p>17 the final account.</p> <p>18 A. Yes.</p> <p>19 Q. And also enter into the confidentiality agreement.</p> <p>20 A. Mm-hmm.</p> <p>21 Q. My understanding is that you had a meeting on</p> <p>22 16 September 2017 with Mr Poon.</p> <p>23 A. The 15th.</p> <p>24 Q. Sorry, 15 September --</p> <p>25 A. Friday, the 15th.</p>   | <p>1 continue making false allegations every time there's</p> <p>2 a commercial dispute?" Okay? That's when it was put to</p> <p>3 him to sign a confidentiality agreement.</p> <p>4 Q. Right. So did you put that to him before Mr Speed</p> <p>5 turned up at the meeting?</p> <p>6 A. Correct, yes.</p> <p>7 Q. Had you discussed that move, as it were, with Mr Speed</p> <p>8 beforehand?</p> <p>9 A. Yes, that's correct. Yes.</p> <p>10 Q. You probably may have heard or read the evidence that</p> <p>11 Mr Speed gave yesterday as to the reasons for entering</p> <p>12 into or asking Mr Poon to enter into that</p> <p>13 confidentiality agreement. Have you read that?</p> <p>14 A. Yes, I read the transcript this morning.</p> <p>15 Q. You read the transcript. Let's just remind ourselves of</p> <p>16 what he said. So that's the transcript for Day 16.</p> <p>17 It's at page 110 of yesterday. The question at</p> <p>18 line 3 -- have you got it there?</p> <p>19 A. Yes.</p> <p>20 Q. -- that I asked was:</p> <p>21 "In the last three to five years, Mr Speed, how many</p> <p>22 confidentiality agreements has Leighton entered into,</p> <p>23 approximately, with their sub-contractors?"</p> <p>24 Pausing there, before we look at the answer --</p> <p>25 I didn't actually get an answer to that question, so I'm</p> |
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| <p>1 Q. Friday, 15 September 2015.</p> <p>2 A. Yes.</p> <p>3 Q. In the late afternoon?</p> <p>4 A. Correct.</p> <p>5 Q. And you reached an agreement with him, and the further</p> <p>6 final account sum was 1.6 million?</p> <p>7 A. Yes.</p> <p>8 Q. And Mr Speed told us yesterday that prior to you having</p> <p>9 that meeting with Mr Poon, you and Mr Speed discussed</p> <p>10 the parameters of the deal that you hoped to reach with</p> <p>11 Mr Poon?</p> <p>12 A. That is correct.</p> <p>13 Q. Could I ask you this: at what point in the discussions</p> <p>14 with Mr Poon did the confidentiality agreement arise; at</p> <p>15 what stage?</p> <p>16 A. It was -- to my recollection, we spoke about finishing</p> <p>17 up on the project; okay? In the previous days and</p> <p>18 weeks, we had been sending letters about poor</p> <p>19 performance, and I agreed with Mr Poon that, you know,</p> <p>20 it wasn't working out and we were determined to maintain</p> <p>21 the relationship because of the Liantang project up on</p> <p>22 the border. We agreed the parameters of the final</p> <p>23 account and the 1.6 million. To maintain -- the</p> <p>24 discussion around maintaining the relationship, it was</p> <p>25 all, "Mr Poon, how can we be assured you're not going to</p> | <p>1 going to ask you. Can you recall how many</p> <p>2 confidentiality agreements Leighton has entered into,</p> <p>3 approximately, in the last three to five years?</p> <p>4 A. I can't speak on behalf of Leighton but as far as agreed</p> <p>5 final accounts, this was my first one.</p> <p>6 Q. Your first one?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. So in the three and a half years in Macau on</p> <p>9 a Leightons project, no confidentiality agreements</p> <p>10 entered into?</p> <p>11 A. Not closing.</p> <p>12 Q. Okay.</p> <p>13 A. But I hadn't had someone making false allegations</p> <p>14 either.</p> <p>15 Q. So if this was your first one -- I mean, were you aware</p> <p>16 of the concept, the idea of a confidentiality agreement,</p> <p>17 before this one?</p> <p>18 A. We'd used -- I know of confidentiality agreements being</p> <p>19 used when we're tendering, when we are asking people to</p> <p>20 provide ideas and initiatives and, you know, give us</p> <p>21 ideas for winning edges and that they remain</p> <p>22 confidential. I know consultants -- we've had</p> <p>23 consultants from time to time signing confidentiality</p> <p>24 agreements.</p> <p>25 Q. Yes.</p>  |

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| <p>1 A. And there could have been specialist sub-contractors<br/>2 also that signed confidentiality agreements.<br/>3 So, I mean -- yeah, as far as I know, this was<br/>4 a standard confidentiality agreement.<br/>5 Q. Right. But the first one that you had direct personal<br/>6 experience of?<br/>7 A. Yes.<br/>8 Q. Okay.<br/>9 CHAIRMAN: Sorry, could I go back just a tiny bit. You said<br/>10 a little bit earlier that you said to Jason Poon words<br/>11 to the effect, "How can we be assured that you won't<br/>12 keep making false allegations?" Do you recall putting<br/>13 it to him that directly?<br/>14 A. Yes. Yes.<br/>15 CHAIRMAN: What was his reaction?<br/>16 A. He just smirked at me. Look, I -- it's not really clear<br/>17 but he smirked at me and then, you know, I said,<br/>18 "Perhaps we can sign a confidentiality agreement", and<br/>19 he agreed to that. I don't think there was any debate<br/>20 about it.<br/>21 CHAIRMAN: He didn't sort of say anything along the lines<br/>22 of, you know, "They are not false at all", or anything<br/>23 like that?<br/>24 A. No. There was no resistance -- sorry, sir, what was<br/>25 your question again?</p>   | <p>1 A. He said, "Yes, I will sign it". You know, there was<br/>2 an agreement -- that's my recollection, he said, "Yes,<br/>3 okay".<br/>4 CHAIRMAN: There wasn't any protestation on his part that<br/>5 you remember?<br/>6 A. No.<br/>7 MR PENNICOTT: Did you have the confidentiality agreement<br/>8 there in your hands, ready to give him, on the 15th?<br/>9 A. No, I did not. I recall it was drafted the following<br/>10 Monday. The final account statement and the<br/>11 confidentiality agreement were drafted on the Monday,<br/>12 the 18th.<br/>13 Q. So you had only talked about the prospect --<br/>14 A. Correct.<br/>15 Q. -- of entering into a confidentiality agreement in<br/>16 principle on the 15th; you hadn't actually seen the<br/>17 terms on the 15th?<br/>18 A. Yes, correct.<br/>19 CHAIRMAN: At that time -- one final question on this<br/>20 subject, thank you -- to your knowledge, had Mr Poon<br/>21 been made aware of the report by Mr Stephen Lumb?<br/>22 A. There was a phone call on the Friday morning. I was in<br/>23 Macau. I regularly went to Macau every Friday. And he<br/>24 rang me just before I was going into a meeting and it<br/>25 was again payment, it was a payment question, and he</p>   |
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| <p>1 CHAIRMAN: I wanted to know if you had been quite direct in<br/>2 saying to him, "Look, we need to be sure that you won't<br/>3 continue making false allegations", and you've said to<br/>4 the best of your memory you did put it pretty bluntly to<br/>5 him, almost in words of that kind if not those words.<br/>6 A. Yes, I was frustrated because the email of 6 January was<br/>7 when there was a commercial dispute, and he had removed<br/>8 his labour from the project at the time; okay? So the<br/>9 timing of the 6 January email was around a commercial<br/>10 dispute. Then that email that he had sent to the<br/>11 Secretary of Transport on Friday, 15 September was at<br/>12 the time of a request for payment which was leading to<br/>13 the commercial dispute because the site team at the time<br/>14 had sent him notices about poor progress and was<br/>15 referring to, "You need to improve your progress or we<br/>16 may need to terminate your contract", words to that<br/>17 effect.<br/>18 So we had reached a serious point and, you know, he<br/>19 had sent that email to the secretary on the Friday, and<br/>20 on that evening when I met with him, I was direct,<br/>21 because, you know, there was a trend emerging with<br/>22 Mr Poon.<br/>23 CHAIRMAN: Okay. And as you say, your memory is that,<br/>24 depending on how you interpret it, he simply smiled back<br/>25 at you or, to use the word --</p> | <p>1 said Jon's away -- Jon Kitching was the project director<br/>2 at the time and he had gone on leave for a long weekend,<br/>3 and he said, "Am I going to get either -- am I going to<br/>4 get a cheque today?" I said, "I'm just going into<br/>5 a client meeting, I'm not aware of the details, what's<br/>6 outstanding to you, I'll be back in Hong Kong tonight,<br/>7 let's meet tomorrow." He said, "What about my email in<br/>8 January?" And I said, "Okay, what about it?", and he<br/>9 said, "You never responded to me", and I said, "I told<br/>10 you that I appointed -- sorry, I said I had appointed<br/>11 an investigator, as in Stephen Lumb, and we had<br/>12 conducted an internal investigation, we had contacted<br/>13 MTRC, and there was nothing -- in that review, there was<br/>14 nothing untoward identified. Then he just said, "Are<br/>15 you going to pay me?" I said, "Look, be reasonable<br/>16 about this. I'm in Macau, I don't know the details.<br/>17 Let's meet on site tomorrow. Let's step through this,<br/>18 Jason", and he hung up on me.<br/>19 And then subsequent to that I went into the client<br/>20 meeting, I recall when I looked at my phone during<br/>21 a client meeting, he had sent an email to the Secretary<br/>22 of Transport requesting a meeting.<br/>23 MR PENNICOTT: And that precipitated you coming back for the<br/>24 afternoon meeting --<br/>25 A. Well, I came back earlier than I would normally --</p> |

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| 1 Q. Just to be clear and just focusing on the chairman's<br>2 question, at no time did you give Mr Poon Mr Lumb's<br>3 report?<br>4 A. No.<br>5 CHAIRMAN: Looking back on it -- and I appreciate hindsight<br>6 is perfect wisdom, and none of us have perfect wisdom.<br>7 -- but looking back on it now, you had a man who<br>8 had, in fairly strong terms, made mention of the fact<br>9 that there was perhaps serious corner-cutting in the<br>10 question of the steel fixing works. Didn't you think it<br>11 would be perhaps a good idea to go back to him and say,<br>12 "Look, let's placate the guy, let's show him the report,<br>13 it's all been investigated, we've taken his views<br>14 seriously, we've looked into the matter; okay? And we<br>15 haven't found anything; okay?" So he has been taken<br>16 seriously, and then you can move from there on a firmer<br>17 basis.<br>18 A. I wasn't prepared to give Jason any more air time on the<br>19 allegation that he made.<br>20 CHAIRMAN: Yes, but looking back now, you don't think<br>21 sometimes giving somebody who's frustrated, who is<br>22 demanding, who is making allegations that public works<br>23 are in danger -- you don't think you shouldn't give him<br>24 a bit of air time?<br>25 A. Not when he's applying -- he's trying to get commercial | 1 them [that's China Technology] to enter into the<br>2 confidentiality agreement either?<br>3 Answer: We -- I think, as I said, the false<br>4 allegations and lies that were getting made against" --<br>5 I think that should be "by" -- "China Technology, that<br>6 is a reason why the confidentiality agreement was<br>7 included."<br>8 So, Mr Zervaas, do you agree with what Mr Speed<br>9 said?<br>10 A. In respect to "the false allegations and lies that were<br>11 getting made against China Tech, that is a reason why<br>12 the confidentiality agreement was being included",<br>13 absolutely.<br>14 Q. So essentially, to put it rather bluntly, you were<br>15 contemplating at that stage entering into this<br>16 confidentiality agreement to shut him up; is that right?<br>17 A. Not to make any more false allegations.<br>18 Q. To shut him up?<br>19 A. Not to make any more false -- I mean, let's remember,<br>20 when he -- at the time of the meeting, he had already<br>21 sent an email to the Secretary for Transport; okay? So<br>22 the issue about cutting rebar, he had already made<br>23 public by way of issuing an email to the Secretary of<br>24 Transport. For me, it was making false allegations<br>25 about any new issues.  |
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| 1 gain from raising the issues. That was my view at the<br>2 time, he was trying to get commercial gain, achieve<br>3 commercial gain.<br>4 CHAIRMAN: You know, some people, with respect, may say it<br>5 tended to show a corporate arrogance. What would be<br>6 your comment?<br>7 A. I disagree strongly.<br>8 MR PENNICOTT: All right. Just going back to the<br>9 confidentiality agreement and Mr Speed's evidence from<br>10 yesterday. So we're back at line 6 with Mr Speed's<br>11 answer, where he said, in answer to my question:<br>12 "With our supply chain, we normally use<br>13 confidentiality agreements for -- basically, in<br>14 tendering, with designers and consultants."<br>15 That's a point you made earlier, Mr Zervaas.<br>16 A. Yes.<br>17 Q. "In these circumstances, we are receiving basically from<br>18 Jason Poon and China Technology false allegations and<br>19 lies, and we decided in a meeting prior to meeting with<br>20 Jason that we would attach the standard form of<br>21 confidentiality agreement to the final account."<br>22 Then if we could go to page 111, please, line 6, the<br>23 next point, the next question I raised, was:<br>24 "There is nothing in the conditions, the terms and<br>25 conditions, of the final account statement that require                             | 1 Q. You see, Mr Zervaas, in paragraph 27 of your witness<br>2 statement, a paragraph which I'm bound to say you repeat<br>3 in the second and third witness statements in more or<br>4 less similar terms, you say this:<br>5 "Poon signed a confidentiality agreement as part of<br>6 the termination of the sub-contract. Poon was happy to<br>7 sign it. This is because Leighton does not want other<br>8 sub-contractors to know about the terms of the<br>9 termination. Obviously, it is not in the best interest<br>10 of Leighton for its sub-contractors to disclose<br>11 commercial information with respect to a mutual<br>12 termination."<br>13 So the justification you're giving there, and<br>14 repeated in your second and third witness statements, is<br>15 that you don't want China Technology or Mr Poon to<br>16 disclose commercial information. The justification was<br>17 not because he was making false allegations. So why<br>18 don't we see anything in here, in your witness<br>19 statement, about the reason that the confidentiality<br>20 agreement was entered into, suggested to him, was<br>21 because he was making false allegations?<br>22 A. Well, they were the facts. We didn't want him making<br>23 false allegations.<br>24 CHAIRMAN: I don't think that actually answers the question.<br>25 Perhaps, Mr Pennicott -- |

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| <p>1 MR PENNICOTT: I will try again, sir.<br/>2 In this statement, Mr Zervaas, and as I've repeated<br/>3 twice already, in your subsequent statements, you make<br/>4 the point that you wanted Poon, China Technology, to<br/>5 enter into this confidentiality agreement so that<br/>6 commercial information, confidential commercial<br/>7 information, would not be disclosed to other parties.<br/>8 A. Okay.<br/>9 Q. You are now saying, as I understand it, that the actual<br/>10 justification for asking him to enter into the<br/>11 confidentiality agreement was nothing to do with<br/>12 commercial information, but because he was making false<br/>13 allegations. Those are two separate things.<br/>14 A. Sorry, I see them linked. He had potential to make<br/>15 false allegations to obtain commercial gain. That's the<br/>16 way I saw it.<br/>17 CHAIRMAN: But hadn't you entered into an agreement with him<br/>18 now? The confidentiality agreement was one leg of that<br/>19 agreement, but there was also a financial side.<br/>20 A. The financial account, which just wrapped up pay to<br/>21 date, payment outstanding, which was 1.6. So it was<br/>22 really a statement of a final account.<br/>23 CHAIRMAN: Then he was going to walk from that?<br/>24 A. Yes.<br/>25 CHAIRMAN: So you had come to an end to your commercial</p> | <p>1 Q. -- following negotiations, you reached an agreement with<br/>2 China Technology on a revised milestone and final<br/>3 account payment schedule; yes?<br/>4 A. Correct.<br/>5 Q. And the final account payment sum at that point in time<br/>6 was \$28 million?<br/>7 A. Correct.<br/>8 Q. And at that point in time, I believe, no malpractice<br/>9 allegations had been made to you by Mr Poon?<br/>10 A. Correct.<br/>11 Q. So that's first.<br/>12 Secondly -- and it didn't take long for things to go<br/>13 a bit sour -- as we've seen, there were the emails of<br/>14 6 and 7 January?<br/>15 A. Yes.<br/>16 Q. Which certainly did allege serious malpractice, as we've<br/>17 seen?<br/>18 A. Yes.<br/>19 Q. On 23 January 2017, you reached a further agreement on<br/>20 a revised milestone and final account payment schedule,<br/>21 which increased the final account payment from<br/>22 \$28 million to \$33 million; is that right?<br/>23 A. Yes.<br/>24 Q. Now, there's only six weeks or so between the first and<br/>25 second agreement that I've just summarised. Can you</p>  |
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| <p>1 dealings, essentially? I appreciate these things often<br/>2 leave stardust in its wake, but essentially you had<br/>3 reached an agreement, so there wasn't much commercial<br/>4 gain to be obtained on his part, was there?<br/>5 A. Remember we had the project -- we had another project<br/>6 with a JV, up at Liantang.<br/>7 CHAIRMAN: All right. So this covered that one as well?<br/>8 A. Whether it did lawfully or not, you know, you need to<br/>9 check with the lawyers which contracts it covered, but<br/>10 I'm just letting you know what was clear in my mind;<br/>11 okay?<br/>12 MR PENNICOTT: But the objective -- what you are now telling<br/>13 us, Mr Zervaas, the objective in entering into this<br/>14 confidentiality agreement was not to protect<br/>15 confidential information. It was to protect you from<br/>16 false allegations being made again?<br/>17 A. For commercial gain.<br/>18 Q. For commercial gain? All right.<br/>19 Could we just look, in broad terms, Mr Zervaas, at<br/>20 the chronology of deals that have been reached between<br/>21 Leighton and China Technology from time to time.<br/>22 A. Yes.<br/>23 Q. Firstly, on 12 December 2016 -- so you have been in the<br/>24 post of project director a couple of months by then --<br/>25 A. Yes.</p>  | <p>1 tell me this: what had China Technology done in the<br/>2 space of just over a month or so to persuade you that<br/>3 the payment of an extra \$5 million, that is from<br/>4 28 million to 33 million, was justified?<br/>5 A. Remember around the time of the 6th he had withdrawn his<br/>6 labour from the project; okay? And I was motivated by<br/>7 progress; okay? Some of the work he was doing was on<br/>8 what we call critical path, and if we delayed the<br/>9 project we could incur penalties, or delaying following<br/>10 trades, what we call designated contractors of MTRC. We<br/>11 could incur general damages, possibly, should MTR elect<br/>12 to do that.<br/>13 So progress at the time was very critical; okay?<br/>14 During my negotiations with Poon, he felt as though the<br/>15 deal that we had done in 12 December, that he had been<br/>16 short-changed; okay? That he couldn't possibly finish<br/>17 the works with call it the remaining 28 million, cost to<br/>18 complete, and he wanted an opportunity renegotiate;<br/>19 okay? And we gave him that opportunity.<br/>20 Q. All right. And you ended up agreeing to pay him<br/>21 an extra \$5 million?<br/>22 A. Correct.<br/>23 Q. All right. Then, thirdly, as we have just discussed,<br/>24 following the meeting on 15 September 2017, you had the<br/>25 meeting, you agreed the final account, there was</p> |

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| <p>1 a further \$1.6 million paid, or payable --</p> <p>2 A. To be paid.</p> <p>3 Q. -- to be paid. I think it actually was paid pretty</p> <p>4 swiftly.</p> <p>5 A. On the following Monday a cheque was released.</p> <p>6 Q. Yes, and obviously you had the confidentiality agreement</p> <p>7 which we've looked at?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. I think you now say, you accept, that both the</p> <p>10 final account statement and the confidentiality</p> <p>11 agreement were signed on the Monday, on the 18th?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. And that was at a meeting between you, Mr Manning</p> <p>14 and Mr Poon?</p> <p>15 A. Correct.</p> <p>16 Q. Of course, it might be said, as I think you do,</p> <p>17 Mr Zervaas, that in raising the alleged threaded rebar</p> <p>18 malpractice, Mr Poon was trying to exert commercial</p> <p>19 pressure upon Leighton to pay him, China Technology,</p> <p>20 more money?</p> <p>21 A. Mm-hmm.</p> <p>22 Q. That's your position and your take on the situation, as</p> <p>23 I understand it?</p> <p>24 A. What he was trying to do, yes.</p> <p>25 Q. The alternative position, Mr Zervaas, might be this. It</p>   | <p>1 A. I'm not sure who contacted Mr Lumb, whether it was -- it</p> <p>2 may have been Paul Freeman at the time that spoke to</p> <p>3 Stephen Lumb to get him into the project.</p> <p>4 Q. Mr Lumb produced his first report in late January 2017,</p> <p>5 then his final report in February 2017.</p> <p>6 A. Mm-hmm.</p> <p>7 Q. Presumably the report would have been submitted to you?</p> <p>8 A. It was -- he tabled it to me, and he had actually</p> <p>9 briefed me on the report.</p> <p>10 Q. Right. And you would have read the report?</p> <p>11 A. No, not from top to bottom, no.</p> <p>12 Q. Can I ask you to have a look at it, the report, that is.</p> <p>13 A. Yes.</p> <p>14 Q. It's in C27.</p> <p>15 If you go, please, to C27/20242.</p> <p>16 There's a hard copy. It's up to you, hard --</p> <p>17 A. Where am I going?</p> <p>18 Q. The front sheet is 20242. That's it there. That's the</p> <p>19 front sheet. We can see 10 February 2017 is the final</p> <p>20 version.</p> <p>21 A. Yes.</p> <p>22 Q. Can I ask you just to look briefly at paragraph 1.2 on</p> <p>23 page 20245. The last sentence reads:</p> <p>24 "The investigation was carried out on site between</p> <p>25 9 and 11 January ... and involved an inspection of</p> |
| <p>Page 122</p> <p>1 might be said that Leighton was willing to pay China</p> <p>2 Technology more money on at least two occasions, namely</p> <p>3 in January and September, and require him to enter into</p> <p>4 a confidentiality agreement to keep him quiet. What</p> <p>5 would you say if that was suggested to you?</p> <p>6 A. The only money, extra money, he was paid was for earned</p> <p>7 value or earned work done; okay? So he had to do the</p> <p>8 work, he had to earn the work, and to produce</p> <p>9 productivity, to be paid; okay?</p> <p>10 Q. You're sure, are you, that you didn't enter into the</p> <p>11 confidentiality agreement on the basis that you paid him</p> <p>12 more money to do so?</p> <p>13 A. Absolutely sure.</p> <p>14 Q. All right.</p> <p>15 Could I then return to Mr Lumb. Now, you, as</p> <p>16 I understand it -- and we can look at the paragraph in</p> <p>17 your statement again in necessary -- you essentially</p> <p>18 instigated the review and investigation by Mr Lumb in</p> <p>19 January 2017?</p> <p>20 A. Correct. I received the email. I called -- I sent the</p> <p>21 email to my operations manager at the time, we discussed</p> <p>22 it and we agreed together that the best thing to do</p> <p>23 would be to get our head of engineering in, to attend</p> <p>24 site and lead an investigation.</p> <p>25 Q. All right.</p> | <p>Page 124</p> <p>1 available site records, and interviews with key members</p> <p>2 of the construction team."</p> <p>3 If you go to 20250, paragraph 5, right at the top,</p> <p>4 Mr Lumb says:</p> <p>5 "Having interviewed various members of the</p> <p>6 construction and supervision teams ..."</p> <p>7 Do you see that?</p> <p>8 A. Yes, I do.</p> <p>9 Q. Have you any idea, Mr Zervaas, as to whom he spoke,</p> <p>10 interviewed?</p> <p>11 A. No.</p> <p>12 Q. Did you just leave it entirely up to him?</p> <p>13 A. Yes, I did.</p> <p>14 Q. Okay. At page 20287 -- it's not easy to see on my</p> <p>15 copy -- he sets a little chart there, where he says:</p> <p>16 "The following Leighton staff will have</p> <p>17 responsibilities as listed below in respect of the works</p> <p>18 covered under this method statement."</p> <p>19 Do you see that?</p> <p>20 A. Yes, I do.</p> <p>21 Q. Then he lists out a number of names that are already</p> <p>22 familiar to us and no doubt over the coming days will be</p> <p>23 more familiar to us. Indeed, in respect of, on the</p> <p>24 left-hand side, Gabriel So, Gary Chow on the right-hand</p> <p>25 side, Joe Leung and Edward Mok, to name four.</p>  |

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| <p>1 Are you able to say whether these are the people<br/>2 that he spoke to?<br/>3 A. No, I'm not.<br/>4 Q. You are not in a position to say?<br/>5 A. No, because some of these people weren't on the project<br/>6 at the time. I think he's referring to an older method<br/>7 statement when this area was constructed. Remember it<br/>8 was constructed in 2015, was it?<br/>9 Q. Oh, 2015.<br/>10 A. So this would have been probably the people that were<br/>11 involved at the time.<br/>12 Q. I see.<br/>13 A. But you would need to ask Stephen that.<br/>14 Q. Okay. I think I'm right in saying, am I not,<br/>15 Mr Zervaas, that this report was passed to the MTR?<br/>16 A. Yes.<br/>17 Q. And did they comment upon it, come back to you on it<br/>18 with any observations; do you recall?<br/>19 A. No.<br/>20 MR PENNICOTT: Thank you very much, Mr Zervaas. Others may<br/>21 have questions for you.<br/>22 MS CHONG: No questions from Fang Sheung.<br/>23 CHAIRMAN: Thank you.<br/>24 Cross-examination by MR TO<br/>25 MR TO: Mr Chairman and Commissioner, I have a few questions</p>   | <p>1 you. Line 19, question:<br/>2 "So your corporate position is that nothing, in any<br/>3 shape or form, by way of load testing, by way of trial<br/>4 investigation, by way of opening up, is necessary? It's<br/>5 simply we can just all walk away from this; is that your<br/>6 position?"<br/>7 Mr Speed's answer is:<br/>8 "No, that's not what I said. What I said is that<br/>9 the works have been constructed in accordance with the<br/>10 contract."<br/>11 Do you agree with that statement?<br/>12 A. I'm not privy to all of the documents submitted by the<br/>13 team, so I believe -- I understand Karl was speaking on<br/>14 behalf of receiving all the witness statements from the<br/>15 various people within Leightons. I haven't seen those.<br/>16 I think he was making a statement -- I can't speak on<br/>17 his behalf.<br/>18 Q. No.<br/>19 A. But I'm not privy to all of the witness statements and<br/>20 the information, so I think your question is unfair.<br/>21 Q. I understand.<br/>22 Can I take you to a document called H5518.<br/>23 Mr Zervaas, this is an email from WK Wong to Jonathan<br/>24 Leung, copying Terence Lai, and it's dated 18 May 2015.<br/>25 If you turn over to the next page, H5520.</p> |
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| <p>1 from China Technology.<br/>2 Mr Zervaas, I have a few questions, if you don't<br/>3 mind.<br/>4 Mr Zervaas, you told Mr Ian Pennicott that you<br/>5 worked on the project from October 2016 to April 2017.<br/>6 Is that correct?<br/>7 A. No. I said I worked on it from 11 October 2016.<br/>8 I didn't give a finish date, I don't recall giving<br/>9 a completion date.<br/>10 Q. Sorry about that. But you mentioned, for example, you<br/>11 had four days of handover; do you remember that?<br/>12 A. On 11 October -- I started on 11 October and I recall<br/>13 Malcolm finished on 15 October. I think the 11th was<br/>14 a Tuesday and the 15th was a Friday, and that's when<br/>15 Malcolm was finishing up.<br/>16 Q. So you familiarised yourself with the details of the<br/>17 project over four days?<br/>18 A. As much as possible. I think four days -- I wouldn't<br/>19 have been across all the issues.<br/>20 Q. I understand. Can I take you to the transcript of<br/>21 Day 16, and it's page 105, line 19. Can you see that,<br/>22 Mr Zervaas? Can I read it out to you, if you want.<br/>23 A. Yes. Who's the transcript by?<br/>24 Q. The transcript is Mr Khaw asking a question of Mr Karl<br/>25 Speed. I'll just read a few lines, if that's okay with</p> | <p>1 First of all, Mr Zervaas, have you seen this email<br/>2 before?<br/>3 A. 2015? No. I wasn't on the project.<br/>4 Q. So you were not familiar with, for example, the handover<br/>5 in terms of these details?<br/>6 A. Absolutely not, no.<br/>7 Q. Can I take you to point 1, just for clarity. Point 1 of<br/>8 it says:<br/>9 "Construction of capping beam/portal frame prior to<br/>10 MTRCL certify D-wall completion and BD to conduct proof<br/>11 test incident came to attention of BD team on 27 January<br/>12 2015."<br/>13 There are some comments there, and the first point,<br/>14 I'm just going to read that out:<br/>15 "Doubtful in fulfilling BO standard."<br/>16 "BO" means Buildings Ordinance standard.<br/>17 So my question to you, Mr Zervaas is: this is<br/>18 a serious matter, isn't it?<br/>19 A. I'm not aware of the context of this email, so<br/>20 I couldn't comment on emails on the project in 2015.<br/>21 Q. Okay. Thank you.<br/>22 Mr Zervaas, my next question relates to Mr Karl<br/>23 Speed's transcript, on page 107 -- maybe start off with<br/>24 page 106, line 15. Mr Khaw mentioned this:<br/>25 "They certainly haven't submitted any as-built</p>  |



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| 1 drawings to the government."<br>2 Mr Karl Speed's answer was:<br>3 "I think they've been prepared."<br>4 Going over the page to 107. Sorry, it's<br>5 Mr Pennicott's question. Mr Pennicott's question on<br>6 page 107, line 3:<br>7 "Why has it taken so long to produce these as-built<br>8 drawings ...?<br>9 Answer: I think they've been produced in accordance<br>10 with the contract."<br>11 And if you look at the very end, line 11 says:<br>12 "I said I would need to speak with the teams."<br>13 So did Mr Karl Speed speak to you about this<br>14 as-built drawing?<br>15 A. No, he hasn't spoken to me about as-built drawings.<br>16 Q. Okay. Can I take you to another document, H39720.<br>17 MR WILKEN: It's in H20.<br>18 MR TO: Thank you.<br>19 MR WILKEN: Item 56_5.<br>20 MR TO: Mr Zervaas, have you seen this document?<br>21 A. No. I don't recall seeing that document. 28 September<br>22 2018, that's recent.<br>23 Q. Have you seen another document called H40052? This is<br>24 a document from the government to the MTRC corporation.<br>25 CHAIRMAN: This is October, just recently.  | 1 "Yes. And ...?<br>2 Answer: Well, target cost contracts have a gain and<br>3 pain mechanism. If the actual cost is less than the<br>4 target cost, you share the gain, and if it's vice versa<br>5 you share the pain between you, up to a maximum limit of<br>6 10 per cent of the contract value."<br>7 From your understanding, do you believe in this<br>8 statement?<br>9 A. That's Khyle's statement.<br>10 Q. Yes.<br>11 A. Yes, that's correct.<br>12 Q. Can I take you to a document, basically it's D430. This<br>13 is the sub-contract for China Technology.<br>14 A. Mm-hmm.<br>15 Q. Can you look down. D430.<br>16 A. Mm-hmm.<br>17 Q. If you look down there, "Normal working hours" -- can<br>18 you see that, Mr Zervaas?<br>19 A. Yes, I can see, 7.30 to 7.30.<br>20 Q. Can you see, for example, just in the middle, it says:<br>21 "... the Sub-Contractor shall be entitled in<br>22 a principal of BQ rates plus 18 per cent which shall be<br>23 applicable on all measurable work done during that<br>24 period of time."<br>25 Can you see that?  |  |          |
| 1 A. No. Recently, I haven't been involved in the day-to-day<br>2 of the project, so no, I'm not --<br>3 MR TO: So you're not aware of these documents?<br>4 A. I'm not aware of these topics.<br>5 Q. I understand. Let's move on to another topic, called<br>6 gain and pain. I'll share whatever, if you want to look<br>7 at it, for example --<br>8 COMMISSIONER HANSFORD: Sorry, before we move on --<br>9 recently, you haven't been involved in the day-to-day on<br>10 the project. Who is doing that role on the project?<br>11 A. Sorry, Jon Kitching is the project director still on the<br>12 project.<br>13 COMMISSIONER HANSFORD: Okay, thank you.<br>14 A. Sorry, he's the project director.<br>15 CHAIRMAN: Right. Okay. Thank you.<br>16 MR TO: Mr Zervaas, can I take you to the transcript in<br>17 terms of Day 16, page 127, line 21. I will just read it<br>18 out:<br>19 "Can you tell us what Mr Plummer actually meant by<br>20 'risk and profit sharing' between Leighton and MTRC?<br>21 What are the sort of special features --"<br>22 And Mr Speed's answer was:<br>23 "Target cost contracts have a gain and pain<br>24 mechanism."<br>25 And if you read down again: | 1 A. Yes, I can see that.<br>2 Q. Now, Mr Zervaas, there was another letter whereby, for<br>3 example, there was amendment to this sub-contract. Are<br>4 you aware of that?<br>5 A. Is this to do with delay recovery?<br>6 Q. Maybe I'll take you to it so you understand that. It's<br>7 D531. The letter is dated 25 April 2015. The underline<br>8 says, "Deed amendment"; can you see that?<br>9 A. Yes, I can see that.<br>10 Q. Can I take you, for example, to the second page of that,<br>11 D532.<br>12 A. Mm-hmm.<br>13 Q. So you can see that in B, if you look very carefully at<br>14 it, basically 18 per cent has been deleted?<br>15 A. I can't see 18 per cent, yes.<br>16 Q. If you read the top:<br>17 "The fifth paragraph under item 5 of the Third<br>18 Schedule of the Sub-contract Agreement -- Sub-contractor<br>19 Particulars -- subsection 'Sub-contract Scope of<br>20 Works' ... commencing 'Normal working hours ...'"<br>21 If you read it, basically I took you to the page of<br>22 D430, there was an 18 per cent, and it has been replaced<br>23 by the one at the bottom, "Normal working hours are<br>24 7.30 am to 7.30 pm ..."<br>25 A. Yes. Whether it's the same paragraph -- and I don't |  |          |

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1 recall the exact paragraph in the sub-contract -- but  
2 I don't see 18 per cent and I don't know if it's the  
3 same context, so --  
4 Q. I understand, but what I've done is basically taken you  
5 to the main document, D430, and this D532 is simply  
6 an extract of what is said in D430; okay?  
7 Now, can I take you to, for example, D534. This is  
8 the one I want to ask you a question on. 11.8, can you  
9 see that?  
10 A. Yes.  
11 Q. So what does that imply?  
12 A. "In the event that the Engineer does not fully reimburse  
13 the Contractor for any DRM related to overtime, the  
14 Contractor is entitled to recover all uncovered costs  
15 from the Sub-Contractor ..."  
16 Q. So, in a way, basically, there's no pain/gain share from  
17 that, is there?  
18 A. For the sub-contractor?  
19 Q. Yes.  
20 A. Not in the context that that's written.  
21 Q. Thank you.  
22 I'm going to take you to a document called the  
23 confidentiality agreement. I'm sure certain individuals  
24 have mentioned that to you already.  
25 A. Yes.

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1 Q. Rather than go through the whole confidentiality  
2 agreement, I'm just going to show you a document which  
3 basically is D252.  
4 A. Sorry, what was the number again, sorry?  
5 Q. D252.  
6 A. Okay.  
7 Q. Just to put it in context, Mr Zervaas, this was an email  
8 issued by Preston Lee, copied to some of your legal team  
9 from Australia.  
10 A. Okay.  
11 Q. And it was issued just before or maybe after Mr Jason  
12 Poon went in to see the MTRC on 13 June; okay?  
13 If you look at the contents of the email, rather  
14 than go through it, just look at point 3 on page 253.  
15 It says:  
16 "The waiver relates only to the technical issue of  
17 the couplers and not to any commercial discussions or  
18 settlement."  
19 Previously, you told us the confidentiality  
20 agreement touched on financial matters.  
21 A. That was my interpretation of the time. This --  
22 I haven't seen this email before, the Preston Lee email.  
23 I don't know why it was sent or the context it was sent.  
24 You would have to ask the legal team.  
25 Q. Okay. Move on. Another one relates to Mr Pennicott's

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1 question about Stephen Lumb's report, and also the  
2 Chairman asked you about this as well. Jason Poon made  
3 the complaint, he gave it to you in January, and you  
4 instigated a process of actually asking Mr Stephen Lumb  
5 to do some investigations; correct?  
6 A. Yes.  
7 Q. Now, surely, if Mr Poon is making a complaint,  
8 Mr Stephen Lumb would have actually interviewed him.  
9 Why not?  
10 A. You will have to ask Mr Lumb that.  
11 Q. Okay. Good.  
12 One last question I want to ask you is: the as-built  
13 drawings, have they been submitted to the government?  
14 A. I'm not aware of the status of the as-built drawings.  
15 Q. It is -- basically we are talking about 1,030 days,  
16 two years, ten months so far, and so far we haven't seen  
17 any BA14s being submitted.  
18 A. I'm not aware of the status of the BA14 submissions.  
19 Q. So, if they haven't been submitted, then chances are  
20 there's a delay?  
21 A. I'm not aware of whether there's a delay. I'm sure  
22 they're being compiled in accordance with the contract.  
23 Q. According to the contract, the project is supposed to be  
24 completed by now.  
25 A. It's still going.

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1 Q. It's still ongoing, so who is responsible for the delay?  
2 MR WILKEN: Sir, I'm not sure this is either within the  
3 scope of this Inquiry or indeed my learned friend's  
4 Salmon letter. This is fishing.  
5 COMMISSIONER HANSFORD: Salmon fishing!  
6 CHAIRMAN: Yes. I think the question of the delay of the  
7 as-built drawings is a matter for the Commission in the  
8 sense that we'd like to see them, but internal issues of  
9 is somebody late with a statement or late with putting  
10 the matters forward seems to me to be an inter-lawyer  
11 matter rather than one for a witness who is here to deal  
12 with other issues.  
13 MR TO: We understand, Chairman.  
14 CHAIRMAN: By inter-lawyer I mean perhaps it's a matter for  
15 Mr Pennicott's team to contact Leightons, et cetera,  
16 et cetera.  
17 MR PENNICOTT: I think the objection was rather broader than  
18 that. Mr To seemed to be asking Mr Zervaas who was  
19 responsible for all the delay on the project, which is  
20 completely --  
21 CHAIRMAN: Sorry, I thought --  
22 MR PENNICOTT: That was my understanding of the question.  
23 MR WILKEN: That was my objection, yes, that we're not in  
24 a delay analysis of the project.  
25 CHAIRMAN: Oh, sorry. I read it as being --

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| <p>1 MR PENNICOTT: In the as-built drawings.<br/>2 CHAIRMAN: -- delay in the as-built drawings.<br/>3 MR PENNICOTT: I thought the question had got rather broader<br/>4 than that.<br/>5 CHAIRMAN: I wasn't expecting that sort of question.<br/>6 MR TO: Sorry, Chairman, it's just as-built drawings haven't<br/>7 been submitted, so there was a delay.<br/>8 CHAIRMAN: Was your question intended to be limited to<br/>9 as-built drawings?<br/>10 MR TO: Yes, it was.<br/>11 CHAIRMAN: As I thought it was.<br/>12 MR WILKEN: Fine.<br/>13 CHAIRMAN: Sorry, in which case, it's a matter I think<br/>14 really to be sorted out internally by the team who is<br/>15 assisting the Commission, and yourself, if necessary,<br/>16 because they have been promised, they are being<br/>17 prepared. It's no different from any other piece of<br/>18 evidence or any other piece of documentary material.<br/>19 MR TO: I understand. Thank you for the clarification,<br/>20 Mr Chairman.<br/>21 Mr Zervaas, just one more question before we<br/>22 conclude, if I may. My learned friend on my side just<br/>23 reminded me about this. Can I show you a document:<br/>24 D432. Mr Zervaas, can you see the top of it says "C"<br/>25 means 100 per cent responsibility of contractor, and "S"</p> | <p>1 MR TO: I understand. I'm trying to show the issue about<br/>2 honeycombs and who's responsible and who's required to<br/>3 do it, so I've got a few documents leading up to that.<br/>4 COMMISSIONER HANSFORD: And hopefully, Mr To, you are going<br/>5 to explain what "cleaning/housekeeping to central<br/>6 points", how they are related to honeycombing?<br/>7 MR TO: Yes, I will do that.<br/>8 COMMISSIONER HANSFORD: Okay. I look forward to hearing<br/>9 that.<br/>10 MR TO: In terms of D436, if you look at item 12(b) -- D436,<br/>11 12(b) -- it says, "Removal and disposal of all excavated<br/>12 materials", and this is the contractor's responsibility;<br/>13 yes? If you look at the bottom, (g), it says general<br/>14 cleaning and final cleaning is the sub-contractor's<br/>15 responsibility?<br/>16 A. That's what it says.<br/>17 Q. Can I take you to a document called B14253. This is<br/>18 a document done by Atkins. Have you seen this document<br/>19 before?<br/>20 A. No.<br/>21 Q. If you look at it, "2nd inspection", it says:<br/>22 "All the defects were repaired at the time of<br/>23 inspection. The depth of honeycomb is unknown."<br/>24 A. Where are you?<br/>25 Q. In "2nd inspection".</p> |
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| <p>1 means 100 per cent responsibility of sub-contractor; can<br/>2 you see that?<br/>3 A. Yes, I can see that.<br/>4 MR PENNICOTT: This is back in the sub-contract, Mr Zervaas,<br/>5 just in case there's any doubt.<br/>6 MR TO: Can you see for example at D433 --<br/>7 A. Yes.<br/>8 Q. -- in terms of mess rooms, sanitary, accommodation,<br/>9 et cetera, in line 2, you can see in (d),<br/>10 "cleaning/housekeeping to central points" is the<br/>11 sub-contractor?<br/>12 A. Sorry, where are you? I lost you. I'm on D433. Which<br/>13 number?<br/>14 Q. Item 2(d).<br/>15 A. Yes.<br/>16 Q. Can you see that "cleaning/housekeeping to central<br/>17 points" is the sub-contractor's responsibility?<br/>18 A. Yes, that's what it says.<br/>19 Q. Can I take you to D436.<br/>20 CHAIRMAN: Sorry, I'm not quite sure -- you may have to<br/>21 assist me there just a little. If this was a criminal<br/>22 trial or a civil trial, I would be leaving you to run<br/>23 your own tactical advantage, but as a Commission, where<br/>24 essentially it's myself and the professor, that seems to<br/>25 be coming, as the Americans say, from out of left field.</p>  | <p>1 A. All right. I'm not aware of this report, so -- I'm not<br/>2 familiar with it.<br/>3 Q. Can I take you to maybe the last document to show you --<br/>4 just two more documents and that's the finish.<br/>5 CHAIRMAN: Sorry, it does say here, though, "The depth of<br/>6 the honeycomb is unknown."<br/>7 MR TO: I understand.<br/>8 I'm going to show him two more documents to conclude<br/>9 this matter.<br/>10 CHAIRMAN: Thank you.<br/>11 MR TO: The document is basically B5/44.3, and can you go to<br/>12 C1-0, and can you see the very last one, that document?<br/>13 Mr Zervaas, can you look at the top of this<br/>14 document, and can you see, for example, are there any<br/>15 honeycombs?<br/>16 A. It's very difficult to see from this photo.<br/>17 Q. Maybe I will show you another document: C1-3, the last<br/>18 document, please. How about this document, Mr Zervaas?<br/>19 A. Not clear. No.<br/>20 Q. You can't see it?<br/>21 A. It's not clear to me, no.<br/>22 MR TO: Thank you very much. I don't have any further<br/>23 questions.<br/>24 COMMISSIONER HANSFORD: Sorry, Mr To, rather than leaving me<br/>25 guessing until your concluding report -- what's it</p>                                     |

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| <p>1 called? -- anyway, could you just explain what we've</p> <p>2 learned from that little exchange?</p> <p>3 MR TO: Professor, what I'm trying to put here is two years</p> <p>4 before the project -- this was completed two years</p> <p>5 before, up to now -- there were no honeycombs</p> <p>6 whatsoever, two years before, and to this day basically</p> <p>7 there are lots of issues about honeycombs being</p> <p>8 mentioned. But if you look at the photographs two years</p> <p>9 ago, there was not a single issue about honeycombs.</p> <p>10 A. I said it wasn't clear.</p> <p>11 CHAIRMAN: On the photographs -- fools step in and I'm about</p> <p>12 to step in -- but isn't there sometimes a fact -- and</p> <p>13 I'll put the question to you, Mr Zervaas, thank you --</p> <p>14 where honeycombing is not immediately apparent; you have</p> <p>15 to do some -- you have to cut away some of the initial</p> <p>16 concrete?</p> <p>17 A. It could be, when you form the slab, and not for me,</p> <p>18 what's happened here, but it could be if you form a slab</p> <p>19 and you pour concrete, you get a slurry coat.</p> <p>20 CHAIRMAN: That's it.</p> <p>21 A. And then you strip the formwork, you see a nice straight</p> <p>22 surface, but it might be a superficial slurry coat of</p> <p>23 2mm to 3mm that could come loose over time which then</p> <p>24 may -- you may see something a bit more obvious later.</p> <p>25 So it's not obvious on these photos. But these photos</p> | <p>1 statement, your first witness statement, paragraph 11,</p> <p>2 where you talk about Mr Jason Poon's complaint about the</p> <p>3 alleged malpractice of the cutting of threaded rebars by</p> <p>4 Leighton's staff. Do you see that? Then obviously we</p> <p>5 know from your evidence that you passed the information</p> <p>6 on to your superiors, both Mr Freeman and Mr Lumb, so</p> <p>7 that they could carry out investigation, regardless of</p> <p>8 the number of emails they would see for the time being;</p> <p>9 right?</p> <p>10 A. Yes.</p> <p>11 Q. And you also passed the information on to MTR for</p> <p>12 reference, for their information; right?</p> <p>13 A. (Nodded head).</p> <p>14 Q. Then at paragraph 19 of your report, you talked about</p> <p>15 the investigation by Mr Lumb.</p> <p>16 Now, first of all, can I just ask you: upon</p> <p>17 receiving Mr Jason Poon's complaint, ie his email, you</p> <p>18 would agree with me that you at least took the view that</p> <p>19 his email or his allegation warranted some</p> <p>20 investigation, from your point of view; is that correct?</p> <p>21 A. Yes, that's why I passed it on.</p> <p>22 Q. You simply could not dismiss it immediately?</p> <p>23 A. It was inconceivable that there could be 30,000 pieces</p> <p>24 of rebar cut. That was my personal view; okay? But it</p> <p>25 was worthy of sending to my superiors to conduct</p> |
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| <p>1 are taken from a distance.</p> <p>2 CHAIRMAN: Yes. The only reason I raise it is that</p> <p>3 perhaps -- the issue of honeycombing is not as simple as</p> <p>4 a photograph of what appears to be a clean concrete</p> <p>5 wall.</p> <p>6 A. You're correct.</p> <p>7 MR TO: Mr Chairman, can I just show the witness,</p> <p>8 Mr Zervaas, B14267.</p> <p>9 This is a layout plan of NSL level, and if you look</p> <p>10 at it, for example, there are certain areas whereby</p> <p>11 photos were taken relating to the honeycomb.</p> <p>12 A. So we are on NSL level, looking up at the soffit of EWL,</p> <p>13 are we?</p> <p>14 Q. Yes.</p> <p>15 A. I don't know.</p> <p>16 Q. So you don't know about this diagram?</p> <p>17 A. I haven't seen this report.</p> <p>18 MR TO: Okay. Maybe I should conclude there.</p> <p>19 CHAIRMAN: All right. Good. Thank you very much.</p> <p>20 Cross-examination by MR KHAW</p> <p>21 MR KHAW: Mr Zervaas, I just would like to discuss with you</p> <p>22 regarding your understanding of Mr Stephen Lumb's</p> <p>23 investigation; okay?</p> <p>24 A. Yes.</p> <p>25 Q. If I can first of all refer you to the witness</p>   | <p>1 an investigation, sure.</p> <p>2 CHAIRMAN: Sorry to interrupt. The 30,000 pieces came up,</p> <p>3 just remind me ...?</p> <p>4 A. That was in his email, I think, of 6 January. It was</p> <p>5 just inconceivable to me.</p> <p>6 MR KHAW: So am I correct in saying that when you received</p> <p>7 his email, on the one hand, you found that it would be</p> <p>8 inconceivable for his allegation to be substantiated,</p> <p>9 but on the other hand, as a matter of prudence, you</p> <p>10 would like to carry out an investigation, to see whether</p> <p>11 your view is right or not; is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. Thank you. Then if we can go back to paragraph 19 of</p> <p>14 your witness statement. You said:</p> <p>15 "At stated above, Leighton carried out</p> <p>16 an investigation on Poon's allegations in his email.</p> <p>17 I was not involved in the investigation as I wanted it</p> <p>18 to be an independent review ..."</p> <p>19 Now, I recall that in your evidence today, earlier</p> <p>20 on, you also said the same thing to us, ie you wanted</p> <p>21 the investigation to be an independent one, and here</p> <p>22 I believe you repeated the same point.</p> <p>23 Now, did you ever consider asking any consultants or</p> <p>24 advisers, outside of Leighton, to carry out this</p> <p>25 investigation in order to make it independent?</p>                               |

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1 A. No, I did not. I didn't consider that, no.  
2 Q. So you believed that an internal investigation would be  
3 independent enough, if it was done properly?  
4 A. Yes.  
5 Q. Then at this paragraph, again, you said:  
6 "I recall being briefed by Stephen Lumb that  
7 Leighton could not find any evidence to suggest there  
8 was any malpractice as Poon had alleged."  
9 Now, pausing here, the main purpose of the  
10 investigation carried out by Mr Lumb was to ascertain  
11 whether there was malpractice as alleged by Mr Poon or  
12 not, right; do you agree?  
13 A. Yes.  
14 Q. So here you said --  
15 A. Sorry, when I say "yes", systematic and widespread, yes.  
16 Q. Where it's a large-scale malpractice?  
17 A. Yeah, large-scale practice, yes.  
18 Q. And here you say you recall being briefed by Mr Lumb.  
19 Do you recall how long the briefing took place?  
20 A. It was at best five to ten minutes.  
21 Q. Five to ten minutes, yes. You told us that you did not  
22 have a chance to read his report; right?  
23 A. I relied on his briefing, so I didn't read the report  
24 from front to back; okay?  
25 Q. Right. Thank you.

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1 A. Nobody would.  
2 Q. Thank you.  
3 Before coming to give evidence today, did you have  
4 a chance to look at his report, look at the contents of  
5 the investigation that he carried out? Did you have  
6 that chance?  
7 A. I had another quick look through it, but I didn't read  
8 through it in great deal, no.  
9 Q. Can you tell us, in this briefing by Mr Lumb, within  
10 10 or 15 minutes, what did he tell you in a nutshell;  
11 what did he tell you?  
12 A. He told me that he had reviewed -- I think most of his  
13 focus was on the records, okay, and making sure that the  
14 records were in place to demonstrate that, you know, we  
15 had the right supervision at the time, okay, and we were  
16 surveilling the -- as the works were being completed,  
17 that we had the right supervision out in the field.  
18 He also briefed me that an NCR had been raised,  
19 which I think it was five rebars cut which I know has  
20 been discussed here. So those are the two key  
21 give-aways or heads-up on the report; okay?  
22 Q. So supervision and NCR, those are the two main points?  
23 A. Yes. Sorry, the main point was there was no evidence to  
24 suggest there was systematic --  
25 Q. Of course, yes. And that caused you to come to this

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1 conclusion as stated in your paragraph 19 that Leighton  
2 could not find any evidence to suggest that there was  
3 any malpractice as Poon had alleged?  
4 A. Yes. That's what he advised me, yes.  
5 Q. Let's take a look at the NCR that he mentioned during  
6 his briefing for the time being. He told you about this  
7 NCR. Did he actually tell you that there was only one  
8 incident of NCR?  
9 A. Yes, as I recall. There was one NCR raised and he said  
10 there was -- involved about five bars.  
11 Q. One NCR which involved five bars?  
12 A. That was my recollection, yes.  
13 Q. Thank you. Can you recall whether he actually talked  
14 about cutting of rebars?  
15 A. No, I don't recall the specifics. I can't say "yes" or  
16 "no". I'd have to pull the NCR out to confirm. I'm  
17 sure he explained to me what was the content of the NCR.  
18 Q. So is it fair for me to say that when he gave you this  
19 briefing, when he talked about the NCR, you did not have  
20 a full picture regarding the extent non-conformity at  
21 that time; would that be right?  
22 A. What he did say, as I recall, there was an issue  
23 observed and the issue was rectified immediately, so it  
24 was an NCR that had been dealt with immediately,  
25 observations had been dealt with immediately.

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1 Q. So you took the words from Mr Lumb that that was not  
2 a major problem, the NCR; is that right?  
3 A. Correct, I took the word of Mr Lumb, yes.  
4 Q. So you did not have an opportunity to look at any of the  
5 pictures in relation to the NCR either; is that correct?  
6 A. Yes, I didn't. I don't recall looking at the pictures  
7 in the NCR.  
8 Q. If we have a chance now to look at the pictures, we will  
9 see what will be your views on this point.  
10 A. I have seen the photos since. It's not clear to me what  
11 exactly the photos are showing.  
12 Q. Of course. Let's just take a look. C12/8135.  
13 If we can take a look at the picture 8136.  
14 A. Yes, got it.  
15 Q. 8139. If we can focus on 8139. Just by merely looking  
16 at this photograph --  
17 COMMISSIONER HANSFORD: Can we blow it up on the screen?  
18 MR KHAW: Yes, of course.  
19 COMMISSIONER HANSFORD: Thank you.  
20 MR KHAW: We can blow it up and see it clearly.  
21 Now, perhaps we can see, obviously, the threaded  
22 rebars not properly installed, and it looks as if the  
23 complete threaded rebars were not even there at the  
24 lower layer of the reinforcement. Do you see that?  
25 A. Yes.

|  |  |
|--|--|
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| <p>1 Q. Now, merely looking at this picture now, as a project<br/>2 director, would you agree that this was in fact quite<br/>3 a serious non-conformity?<br/>4 A. It's an issue that needs immediate rectification. It's<br/>5 obviously -- it depends on the time when the photo was<br/>6 taken. It was offered up as a hold point and people saw<br/>7 it, it was -- a hold point had been observed, and it<br/>8 clearly wasn't installed properly. The team did the<br/>9 right thing.<br/>10 Q. Now you've got a chance to see this picture, would you<br/>11 immediately consider, "Hey, how come the workers were<br/>12 allowed to do this?" Would you consider this?<br/>13 A. I don't think the workers -- given it was an NCR,<br/>14 I don't think the workers were allowed to do it. It was<br/>15 observed and stopped. You don't have one supervisor for<br/>16 every worker.<br/>17 Q. Thank you.<br/>18 A. So it was when we rectified when it was observed.<br/>19 Q. Thank you. And an NCR like this would also lead you to<br/>20 consider whether supervision or inspection work had been<br/>21 done properly, otherwise there should not have been such<br/>22 problem; would you agree?<br/>23 A. No, I think -- as I said, you can't have one supervisor<br/>24 for every worker, so if the supervisors in the area --<br/>25 they're not watching every worker and they subsequently</p> | <p>1 MR KHAW: Yes.<br/>2 CHAIRMAN: Good.<br/>3 MR PENNICOTT: Sir, can I just raise one point by way of<br/>4 perhaps putting down a marker, and it's really a marker<br/>5 being put down for Leighton. It's a matter that I think<br/>6 probably I take responsibility for. But Mr Lumb is<br/>7 currently the last of the witnesses for Leighton. That<br/>8 was a conscious decision taken by the Commission's legal<br/>9 team, for a number of reasons.<br/>10 I'm beginning to wonder whether that was a very wise<br/>11 decision. I am beginning to wonder whether perhaps<br/>12 Mr Lumb ought to come sooner rather than later. I will<br/>13 give it more thought overnight, but I can see what is<br/>14 happening at the moment, or may happen over the next few<br/>15 days. I'm endeavouring to find out who it was that<br/>16 Mr Lumb spoke to for the purposes of producing his<br/>17 report, who he interviewed, and my concern is that I'm<br/>18 going to be asking witness after witness who all say,<br/>19 "No, he didn't speak to me", "He didn't speak to me",<br/>20 "He didn't speak to me", and we will get to the end of<br/>21 the day and Mr Lumb will come along and tell us who he<br/>22 spoke to and we will have missed, potentially, our<br/>23 opportunity.<br/>24 I just wonder whether -- I'm going to think about<br/>25 it, perhaps you, sir, also could give it some thought as</p> |
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| <p>1 see an issue, and raise it and rectify it, they've done<br/>2 their job.<br/>3 Q. Now, you just told us that according to your knowledge,<br/>4 the supervisors in that area were not watching every<br/>5 worker. How did you get that information?<br/>6 A. I just -- it's not practical that you have one<br/>7 supervisor for one worker.<br/>8 Q. So, at the time when Mr Lumb gave you the briefing, did<br/>9 you have any idea regarding the extent and frequency of<br/>10 inspection and supervision which was carried out by<br/>11 Leighton?<br/>12 A. Not specifically out in the field, no. No.<br/>13 Q. Were you aware of the requirements which were stated<br/>14 under the QSP?<br/>15 A. At the time, no. I do now know, yes. Well, I know<br/>16 there's a QSP specifically for couplers, but at the time<br/>17 I wasn't aware.<br/>18 Q. Right. And obviously, at the time when briefing was<br/>19 given to you, you were not aware of any of the reasons<br/>20 or causes as to why this NCR occurred; right?<br/>21 A. Correct.<br/>22 MR KHAW: Mr Chairman, I note the time. I still have<br/>23 probably more than half an hour.<br/>24 CHAIRMAN: All right. If this is an opportune moment for<br/>25 you.</p>   | <p>1 to whether the Chairman and the Commissioner have<br/>2 a position on this.<br/>3 I hadn't appreciated, I have to say, until the last<br/>4 24-48 hours that this is a matter that's perhaps more<br/>5 important than I had originally realised. We haven't<br/>6 looked at it yet but there's a rather important section<br/>7 in Mr Lumb's report, section 8, that deals with remedial<br/>8 measures. We don't need to look at it now. But there's<br/>9 some information there and I'd quite like to know where<br/>10 that came from, who gave that information to him,<br/>11 because it's quite obvious all his report is based upon<br/>12 what he was told by the people he interviewed. I'm<br/>13 going to give that some more thought.<br/>14 I mention it because Leighton ought to know about<br/>15 it, just in case there's any problem with Mr Lumb's<br/>16 immediate availability. Sir, I mention that as<br/>17 a possibility and I'll come back to it in the morning,<br/>18 if I may.<br/>19 CHAIRMAN: Yes, certainly.<br/>20 COMMISSIONER HANSFORD: From my point of view, Mr Pennicott,<br/>21 please do, but I also would note that we're going to<br/>22 have a break of a week after this Friday, and it seems<br/>23 quite sensible to me that we hear from Mr Lumb before<br/>24 that break.<br/>25 MR PENNICOTT: Yes, sir. I understand the point. Thank</p>                                 |

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| 10 discuss the merits or otherwise or tactics concerning    | 10  |
| 11 your evidence, indeed anything at all about it, with any | 11  |
| 12 other third party, including your own lawyers.           | 12  |
| 13 WITNESS: Okay. Yes.                                      | 13  |
| 14 CHAIRMAN: Thank you very much.                           | 14  |
| 15 (5.07 pm)  | 15  |
| 16 (The hearing adjourned until 10.00 am the following day) | 16  |
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