

1 Tuesday, 13 November 2018

2 (10.02 am)

3 MR PENNICOTT: Sir, good morning. Good morning, Professor.

4 The next witness is Mr Law. I think Mr Wilken is  
5 going to take him in-chief.

6 MR WILKEN: Mr Shieh is going to take him.

7 MR PENNICOTT: Very good.

8 CHAIRMAN: Thank you.

9 MR SHIEH: Good morning, Mr Chairman and Commissioner.

10 Good morning, Mr Law. Do you have in front of you  
11 a sheet containing words for taking an affirmation or  
12 an oath?

13 Mr Law, when you provide an answer, I would ask you  
14 to speak out rather than just nodding, because we have  
15 a recording system and it has to pick up words that you  
16 speak. So you have that card in front of you; correct?

17 WITNESS: 係。

18 MR LAW CHI KEUNG (affirmed in Puntì)

19 Examination-in-chief by MR SHIEH

20 MR SHIEH: Mr Law, could you turn to bundle C34 and look at  
21 page 25780. The English version is at 25782. Do you  
22 see that, Mr Law? Is it on the screen in front of you?

23 A. 睇到。

24 Q. That is a first witness statement by you; correct?

25 A. 係,冇錯。

26 Q. Can you then turn to page 25781. That's the Chinese.

1 The English is 25783. Do you see your name and what  
2 appears to be a signature on top of your name?

3 A. 見到。

4 Q. Do you confirm that that is your signature?

5 A. 係，呢個簽名係我嘅。

6 Q. Do you put forward this witness statement as your  
7 evidence in front of this Commission of Inquiry?

8 A. 冇錯。

9 MR SHIEH: Mr Law, please continue, be seated where you are,  
10 because other lawyers in this Inquiry will ask you some  
11 questions. The Commissioners will also ask you  
12 questions if they want to, and after all that I may ask  
13 you some questions by way of rounding-up and  
14 re-examination.

15 WITNESS: 明白。

16 MR SHIEH: And the lawyers will introduce to you whom they  
17 represent when they ask you questions.

18 Examination by MR PENNICOTT

19 MR PENNICOTT: Mr Law, good morning.

20 A. Hello.

21 Q. I'm one of the counsel for the Commission. I get to ask  
22 you some questions first. As Mr Shieh has explained, if  
23 anybody else has some questions for you, they will then  
24 get a chance to ask what they wish. Thank you very much  
25 for coming to give evidence to the Commission this

1 morning.

2 First of all, Mr Law, can I try to just sort out the  
3 various jobs that you had on this site, that is the  
4 SCL1112 project site. My understanding is as follows.  
5 Firstly, on 20 March 2015, you were employed by  
6 a company called K&F Construction as a signalman and  
7 banksman; is that correct?

8 A. 正確。

9 Q. Then, at a precise date I'm unsure of, in September  
10 2015, you moved to a company called Rankine,  
11 R-A-N-K-I-N-E, or Wai Kei; is that correct?

12 A. 正確。

13 Q. Then in February 2007, you worked, as I understand it,  
14 for a short period for China Technology; is that  
15 correct?

16 A. 冇錯。

17 Q. Okay. Now, the period that I'm interested in is  
18 September 2015. The reason for that is that you have  
19 been allegedly identified as appearing in some  
20 photographs, and we'll look at those photographs in  
21 a moment.

22 Essentially, Mr Law, that is the sole reason why you  
23 have been brought along to this Inquiry, but we will  
24 come to those photographs in a moment.

25 First of all, in September 2015, when you were  
26 working for Wai Kei, what was your job? What were your

1 duties?

2 A. 我嘅職責就係雜工，即係話清理現場嗰啲垃圾，同埋做交通督導員，同埋  
3 幫佢嗰啲板料同埋嗰啲嘢係做--即係話做吊運嗰啲嘢嚟嘅，可以話信號員  
4 嗰種。

5 Q. Right. So, in September 2015, when you switched from  
6 K&F Construction to Wai Kei, what colour helmet or hat  
7 did you wear?

8 A. 藍色。

9 Q. Right. So could we then look at the photographs. They  
10 are in D1/601, 602 and 603.

11 Mr Law, we are looking now at D601. It's dated  
12 4 September 2015. Now, by 4 September 2015, would you  
13 have been working for Wai Kei or Rankine?

14 A. 喺，冇錯。

15 Q. We can see, I think, one worker in this photograph  
16 wearing a blue helmet; do you see that?

17 A. 睇到。

18 Q. Is it you?

19 A. 我唔確認係咪我。

20 Q. Right. So it might be you and it might not be you?

21 A. 冇錯。

22 Q. All right. Then, just looking at the photograph, and  
23 given the fact that you do accept that you were working  
24 on the site, can you tell what the worker with the blue  
25 helmet and the worker with the red helmet on his right

1 are actually doing?

2 A. 呢張相我唔確認佢喺度做緊乜嘢。

3 Q. Okay.

4 COMMISSIONER HANSFORD: Can we have it bigger again, please.

5 Thank you.

6 MR PENNICOTT: Does that help, Mr Law?

7 A. 我都係確認唔到佢喺度做緊乜嘢。

8 Q. All right. We can see that they are obviously -- the  
9 worker with the blue helmet is crouching down on a piece  
10 of plywood, it looks like, and the worker with the red  
11 helmet is probably standing on the rebar.

12 Mr Law, do you have any recollection of carrying out  
13 work on the rebar as part of your responsibilities in  
14 September 2015?

15 A. 我哋只會做個响鋼筋下面嗰啲清理嗰啲垃圾。

16 Q. Right. So that was, so far as you're concerned, so far  
17 as the rebar is concerned, your only function was  
18 cleaning debris and suchlike?

19 A. 冇錯。

20 CHAIRMAN: Sorry, can you help me just a little bit --  
21 cleaning debris. Presumably heavy items of debris like  
22 steel chunks would fall right through; is that right?

23 A. 有機會。

24 CHAIRMAN: So what were you looking for? Bits of paper?

25 I'm just not sure.

1 MR PENNICOTT: What type of debris were you seeking to  
2 identify and clear away, Mr Law?

3 CHAIRMAN: Thank you.

4 A. 譬如喺木板碎，即係話佢紮鐵啲鐵線頭啲嘢。

5 MR PENNICOTT: Okay. Did you ever come across any piece of  
6 cut threaded rebar?

7 A. 我清理現場嗰陣時候，我係未見過嘅。

8 Q. Okay. Perhaps we could have a look at the next  
9 photograph, 602, please. I'm sorry, 603. There we are.  
10 Quite similar to the previous photograph, Mr Law,  
11 but this time somebody else in a red helmet has joined;  
12 do you see that?

13 A. 睇到。

14 Q. I assume -- again, it is suggested that you are the  
15 person in the blue helmet, and I assume your answer is  
16 the same that you gave me a short while ago: it may be  
17 you or may not be you?

18 A. 冇錯。

19 COMMISSIONER HANSFORD: Can we have this one a little bit  
20 bigger? Thank you.

21 Thank you.

22 MR PENNICOTT: Sir, I have no other questions about that  
23 photograph, so I'm going to move on to the last one,  
24 which is 604, please.

25 CHAIRMAN: Sorry, can I ask one question about it? I notice

1           that there is a cutting machine just very close to where  
2           the man in the blue helmet is crouched. Did you ever  
3           involve yourself in using that cutting machine, or one  
4           like it?

5       A.   有。

6       CHAIRMAN: What did you do with it?

7       A.   上面科文同我哋講如果佢--即係話有啲位係要開井口嘅，即係話佢要留個  
8           窿開個井口，就話要用呢部機喇，我哋。

9       CHAIRMAN: Would that involve cutting rebars?

10      A.   涉及。

11      CHAIRMAN: Would it ever involve cutting the end of a rebar  
12           that was silver in colour and had little threads going  
13           round and round and round?

14      A.   我清楚你講咩嘢，法官，我哋係唔涉及螺絲頭嘅。

15      CHAIRMAN: Okay.

16      MR PENNICOTT: Sorry, could we just go back to 601 for  
17           a moment. Could you blow up 601. Okay. And then 604,  
18           please.

19           This is the one where we get a better view of the  
20           cutter, it would appear. The Chairman has asked you  
21           a series of questions about the cutter that was spotted,  
22           not so easily but certainly spotted and capable of being  
23           spotted, in the previous photographs.

24           Now we've identified clearly the cutter there,  
25           Mr Law, can you think of any reason why the cutter would

1 be used in this location?

2 A. 我就睇呢幅圖嚟咁講呢，佢係有機會佢直身上嚟啲鋼筋係高過個石屎面，  
3 所以佢有機會會斬低佢啲度--要斬番平，同個石屎面--唔係，同個鐵面一  
4 模一樣啲個高度，咁佢先唔可以高過個石屎面，應該可以有機會係咁，有--  
5 即係話咁嘅原因。

6 Q. Right. We can see on the right-hand side of the  
7 photograph --

8 COMMISSIONER HANSFORD: Yes, can we have that a little bit  
9 bigger?

10 MR PENNICOTT: -- just to the right of the right edge of the  
11 cutter, what look to be a couple of vertical rebar; do  
12 you see that?

13 A. 見到。

14 Q. And it's that type of rebar that you say might be cut,  
15 for the reasons you gave?

16 A. 我應該講係--你係咪講緊直身呢度呢啲？

17 Q. Yes, I am.

18 A. 係嘅，係有機會會剪咗佢嘅，呢個。

19 COMMISSIONER HANSFORD: Mr Law, it looks as though they have  
20 just been cut, because they are silver in colour as  
21 opposed to rusty in colour -- sorry, that's not silver  
22 to be mistaken with the threaded bar silver, but that's  
23 silver -- it looks as though those bars on the right  
24 have recently been cut. It's difficult to be sure from  
25 this photograph.



1 Does it look to you as though those vertical bars  
2 have recently been cut?

3 A. 就睇幅相，應該係未剪㗎喎。

4 COMMISSIONER HANSFORD: Okay.

5 MR PENNICOTT: Right. If we just go, finally, back to 601  
6 again. If you could blow it up again, please.

7 Can you identify on 601, Mr Law, any vertical rebar  
8 that looks as though it may have recently been cut?

9 A. 應該比較下銀色嗰啲部分，應該係剪咗嘅。

10 Q. One can see -- it may of course be just the light, one's  
11 speculating a bit, I accept, but is it possible -- is  
12 that what you're saying, it's possible -- that the ones,  
13 three that look as though they have a different colour  
14 at the top than the others, it's possible, no higher  
15 than that, that they may have been cut?

16 A. 應該係。

17 COMMISSIONER HANSFORD: Can we blow it up again? Yes,  
18 there. That's it. Thank you.

19 MR PENNICOTT: Do you recall yourself -- you mentioned that  
20 you did some cutting of rebar for the purposes, I think,  
21 of creating openings is what you said -- do you recall  
22 yourself personally using the cutter, Mr Law, to cut  
23 vertical rebar such as we see here?

24 A. 我有做過嘅。

25 Q. Can I go back to your answer that I've just mentioned,

1 creating openings by cutting rebar. What do you mean by  
2 that? What sort of openings are you referring to?

3 A. 留一個井位出嚟啲，一啲沙井，類似啲情況啲。

4 Q. Is that the totality of the answer, "We created some  
5 sort of shaft"? Okay.

6 For what purpose?

7 A. 佢可能係一啲即係話佢啲電線井或者係一啲去水嘅井咁樣類似啲情形--  
8 情況。

9 Q. All right. And you would only do that under the  
10 instructions of Leighton; is that right?

11 A. 冇錯，而且係絕對添。

12 MR PENNICOTT: Thank you very much, Mr Law. Others may or  
13 may not have questions.

14 Cross-examination by MR SO

15 MR SO: Sir, some very short questions from China  
16 Technology.

17 Mr Law, good morning. I represent China Technology.

18 Mr Law, can you tell us your employment status now?

19 A. 我而家响宋皇臺嗰邊，都係屬於即係話啲禮頓即係判出嚟啲判頭  
20 工啲。

21 Q. Right. Regarding Rankine or Wai Kei that you just  
22 mentioned to Mr Ian Pennicott just now, do you know the  
23 role of Rankine or Wai Kei under this SCL1112 contract?

24 A. 唔清楚。

25 Q. Can I bring you to your witness statement, paragraph 3.

1           There you said you were a general labourer at the time  
2           and worked under the supervision and instruction of  
3           Leighton's foreman. As I understand about general  
4           labourer, so you are basically responsible for any jobs  
5           which are assigned to you by Leighton's foreman;  
6           correct?

7           A. 冇錯。

8           Q. Would this include screwing rebars into the couplers?

9           A. 唔包括。

10          Q. So is it your evidence that you have never screwed any  
11          threaded rebars into the couplers?

12          A. 冇錯。

13          Q. You told us you were under the supervision and  
14          instruction of Leighton's foreman. Can you still recall  
15          which Leighton foreman instructed or supervised you?

16          A. 業Sir。

17          Q. Do you mean Mr Andy Ip or do you mean Mr Chan Chi Ip?

18          A. 陳志業。

19          MR SO: Thank you. I have no further questions.

20          CHAIRMAN: Thank you.

21          MR BOULDING: No questions from MTR, sir. Thank you.

22          CHAIRMAN: Thank you.

23                               Cross-examination by MR KHAW

24          MR KHAW: Just a few questions, Mr Chairman.

25                               I am acting for the government.

1           If you may take a look at the photograph shown at D2  
2           [sic], page 603. You could not be sure whether the one  
3           wearing a blue hat is you or not; right?

4           A.  啱，冇錯。

5           Q.  Can you recognise the other people shown in this picture  
6           wearing red hats; do you recognise them?

7           A.  我係認唔到，因為嗰個時期係好多人戴紅帽嘅，所以太多人，因為有啲人--  
8           即係佢有時喺呢邊做嘢，有時响第二邊做嘢，所以太多紅帽，我係認唔到。

9           Q.  Do you have any idea as to whom they were working for,  
10          those wearing red hats, whom they were working for; any  
11          idea?

12          A.  唔清楚。

13          Q.  If we can just let this picture stay on the screen and  
14          then we can try to find another picture, D1/227, and try  
15          to put them side by side.  Yes.

16                 Can you see the words or markings in red which state  
17                 "plus 1.02"; can you see that?  First of all, on 603.  
18                 Can you see that?

19          A.  見到。

20          Q.  Then if we go to the next picture, D227 --

21          COMMISSIONER HANSFORD:  Sorry, before we do, can I just see  
22          the dates and times on both pictures?

23          MR KHAW:  Yes.  603, that should be 4 September, 9:29 --

24          COMMISSIONER HANSFORD:  And 9:05.

25          MR KHAW:  -- and then the other one is 9:05, yes.

1 COMMISSIONER HANSFORD: Thank you.

2 MR KHAW: First of all, can I just confirm with you -- first  
3 of all, we see the words "plus 1.02" -- can you tell us  
4 what are the words stated next to "02"?

5 A. 睇唔到。

6 Q. Then if we can take a look at the other picture, 227,  
7 would you agree that it apparently shows the same area?

8 A. 應該係同一個位置。

9 Q. Do you have any recollection as to whether you ever  
10 worked in that area on the site?

11 A. 我應該會有嘅，呢個位置我都會。

12 Q. What did you do in that particular area?

13 A. 吊鐵料、吊木板、木方嗰啲料，同埋清理垃圾。

14 Q. How many workers -- we are talking about while you were  
15 working in that particular area -- how many workers were  
16 wearing blue hats; can you remember?

17 A. 應該有三至四位以上。

18 Q. And they were all working for Rankine or they were  
19 working for different companies?

20 A. 嗰--應該係屬於偉基嘅，嗰邊嗰啲人都係。

21 Q. If we can take a look at 601 again. If we can blow up  
22 601 for the time being. Just blow up a little bit more.  
23 A bit more. Yes.

24 Now, you can see the person on the right wearing the  
25 red hat, can you not?

1 A. 見到。

2 Q. Now, just below his red hat, you can see two sort of  
3 hollow-shaped materials. Are they couplers?

4 A. 邊個位置?

5 Q. Just the two bars under the red hat, vertical bars.

6 A. 就咁睇，應該佢係螺絲嘅帽頭。

7 Q. If we can move down a little bit, if we can look at some  
8 of the vertical steel bars underneath the horizontal  
9 steel bars. If we can blow up a little bit further.  
10 Yes.

11 If you look at the steel bar that the person on the  
12 right was holding -- can you see that?

13 A. 睇到。

14 Q. Is that also a coupler?

15 A. 呢條應該係屬於螺絲帽嘅鋼筋。

16 Q. Yes. So it's a threaded rebar on a coupler; right?

17 A. 係，冇錯。

18 Q. If we can take a look at the vertical bar on top of this  
19 horizontal bar held by this person on the right -- do  
20 you see that? -- you see a shiny silver surface on top;  
21 can you see that?

22 A. 見到。

23 Q. Yes. Am I correct in saying that that is also  
24 a threaded rebar from a coupler?

25 A. 應該唔係。

1 Q. So it's a different kind of rebar?

2 A. 冇錯。

3 Q. Even though we can see some threading surrounding this  
4 particular bar? How can you tell that this does not  
5 belong to a threaded rebar from a coupler?

6 A. 因為我响嗰啲位，我經常係見到有啲咁嘅鐵，係冇螺絲頭嘅鋼筋喺呢度，垂  
7 直嘅。

8 Q. Right. Then if I can take you to have a look at D1/228.

9 Just from this picture, do you recognise who this  
10 worker is?

11 A. 認唔到，以佢嘅衫嘅裝束，應該唔係屬於偉基。

12 Q. So, looking at his clothing, do you have any idea as to  
13 where this worker came from, whom he was working for?

14 A. 唔清楚，太多人。

15 Q. Maybe one more try. 232. Any rough idea as to whom  
16 they were working for, by looking at their clothing,  
17 their helmets, et cetera?

18 A. 睇衫、睇帽，我就認唔到喇，如果佢做緊呢個動作，扭緊螺絲頭入去呢，就  
19 最大機會就係即係泛迅嗰邊嗰啲紮鐵工。

20 Q. Thank you.

21 Finally, if I can take you to have a look at your  
22 paragraph 5 of the witness statement. You said:

23 "While working on the project, I did not cut off or  
24 shorten any threaded ends of rebars. I do not know of  
25 any person who would have done so. I was also never

1 instructed by Leighton's staff or any other person to  
2 cut the threaded ends off rebars. I do not know of any  
3 person who gave or received an instruction to cut the  
4 threaded ends off rebars."

5 Can I just ascertain from you whether you ever saw  
6 any cut threaded rebars on the site? You saw any rebars  
7 having been cut and placed on the site, the threaded --

8 A. 你係講緊鋼筋定係鋼筋嘅螺絲頭？

9 Q. I'm sorry, I should have made myself clear. Have you  
10 ever seen the threaded rebars of a coupler having been  
11 cut and placed on the site?

12 A. 我有見過。

13 MR SHIEH: That's slightly confusing because "threaded  
14 rebars of a coupler" seems to mix up numerous concepts.

15 CHAIRMAN: Yes.

16 MR SHIEH: There's a rebar, the end is threaded, and  
17 a coupler is what we understand to be the cap, so  
18 it's all concepts rolled into one question.

19 MR KHAW: The threaded part of a rebar having been cut and  
20 placed on the site?

21 A. 我有見過。

22 MR KHAW: Thank you. I have no further questions.

23 MS CHONG: No questions from Fang Sheung.

24 Questioning by THE COMMISSIONERS

25 CHAIRMAN: Good. Thank you. Just a couple of questions, if  
26 I may.



1           These photographs just shown, they indicate perhaps  
2           that when you were working, other workmen from different  
3           companies were working in the area at the same time; is  
4           that right?

5       A.   冇錯。

6       CHAIRMAN:   So would it be correct to say that in September  
7           2015, for example, and thereafter, while you were still  
8           employed by Rankine, you might be working in this area  
9           where they were laying steel bars, and very close to you  
10          would be workers from China Technology?

11      A.   喺, 冇錯。

12      CHAIRMAN:   You would be doing work given to you by Leighton  
13          staff; is that right?

14      A.   喺, 冇錯。

15      CHAIRMAN:   While the China Technology people would be doing  
16          their own work?

17      A.   喺, 冇錯。

18      CHAIRMAN:   Were you ever instructed to actually assist China  
19          Technology people?

20      A.   有。

21      CHAIRMAN:   So sometimes, depending on the instructions from  
22          Leighton, you might be assisting China Technology for  
23          part of the day?

24      A.   係, 冇錯。

25      CHAIRMAN:   But, as I understand it from what you've already

1           said, you would never actually undertake the work of  
2           screwing in rebars or anything like that; it would be  
3           more general work, carrying and things like that?

4           A.   係，冇錯。

5           CHAIRMAN: All right. Thank you very much.

6           MR SHIEH: Very short re-examination, Chairman.

7           CHAIRMAN: Yes.

8                                 Re-examination by MR SHIEH

9           MR SHIEH: Can the witness be shown D1/227.

10                         Mr Law, there are two persons in this photograph.

11           Do you see them?

12           A.   睇到。

13           Q.   You have been asked about this photo, and can I draw  
14           your attention to the person who seems to be kneeling  
15           down; do you see him?

16           A.   睇到。

17           Q.   He is holding what appears to be a machine; do you see  
18           that?

19           A.   睇到。

20           Q.   I thought we had established that it looks like  
21           a cutter. Do you accept that?

22           A.   接受。

23           Q.   Can you tell us, to the best of your ability, looking at  
24           this photograph, what that person might be doing?

25           A.   嗰張相應該佢係剪緊嗰支係高過石屎面嘅鐵頭。

1 MR SHIEH: I have no further questions. Thank you very  
2 much.

3 CHAIRMAN: Thank you.

4 Thank you very much indeed, Mr Law. You have been  
5 of great help to us. You can go now. Hopefully you  
6 won't need to be called back again. All right? Thank  
7 you for your assistance.

8 WITNESS: Thank you.

9 (The witness was released)

10 MR SHIEH: Mr Chairman and Mr Commissioner, the next witness  
11 is Mr Ho Hiu Tung.

12 CHAIRMAN: Thank you.

13 MR SHIEH: Good morning, Mr Ho.

14 WITNESS: 早晨。

15 MR HO HIU TUNG (affirmed in Puntì)

16 Examination-in-chief by MR SHIEH

17 MR SHIEH: Mr Ho, in this hearing, every word that is said  
18 will be picked up by microphones, so could I ask you,  
19 when you give an answer, instead of nodding or giving  
20 a gesture, you speak up so that the microphone can pick  
21 up what you are saying. Do you understand?

22 A. 明白, 清楚。

23 Q. Can I ask you to look at bundle C34, page 25784. That's  
24 the Chinese version. The English version is at 25786.  
25 That is the first witness statement made by you;  
26 correct?

1 A. 正確。

2 Q. Can I then ask you to turn to page 25785. The English  
3 version is 25787.

4 On that page, above your Chinese name, there is what  
5 appears to be a signature; do you see that?

6 A. 見到。

7 Q. That is your signature; correct?

8 A. 正確。

9 Q. Can I ask you to look at paragraph 6 of this witness  
10 statement. Do you have anything to add to or to modify  
11 or say in relation to this paragraph?

12 A. 有。

13 Q. Please tell us.

14 A. 應該係10月22號落--寫呢份嘢嘅，我10月22號我打過畀阿畢。

15 Q. Stop for a while. Allow the translation to complete.

16 I think the witness said on 22 October he wrote this  
17 or he signed this.

18 Did you say you signed it or wrote it on 22 October,  
19 this statement?

20 A. 係22號簽名。

21 Q. Thank you. You said on that day you called Mr But.

22 A. 正確。

23 Q. Did you call Mr But before or after signing it?

24 A. 之後。

25 Q. Can you tell us about your conversation with Mr But that

1 day?

2 A. 可以，我就問佢我都認唔到自己，點解佢話係我嚟嗰個，跟住我問佢而家  
3 喺邊度做嘢，佢話而家喺中科做嘢。

4 MR SHIEH: Thank you very much, Mr Ho. Could you then  
5 remain in the witness box because other lawyers may have  
6 questions for you.

7 WITNESS: 明白。

8 MR SHIEH: And Mr Chairman and Mr Commissioner may also have  
9 questions for you.

10 WITNESS: 明白。

11 MR SHIEH: After they have all asked you questions, I may  
12 have some follow-up questions for you.

13 WITNESS: 明白。

14 MR SHIEH: Do remain seated.

15 Sorry, subject to your comments on paragraph 6 of  
16 your witness statement, do you put forward that  
17 statement as your evidence in these proceedings?

18 Can I put it again. We have now heard your  
19 additional evidence in relation to paragraph 6 of the  
20 witness statement. Do you now put forward the content  
21 of your witness statement as your evidence before this  
22 Commission of Inquiry?

23 A. 會。

24 MR SHIEH: Thank you very much.

25 Examination by MR PENNICOTT

1 MR PENNICOTT: Mr Ho, good morning.

2 A. Good morning.

3 Q. My name is Ian Pennicott and I am one of the counsel for  
4 the Commission, and I get to ask you some questions  
5 first.

6 Could I ask you, please, to explain why you felt it  
7 appropriate to call Mr But?

8 A. 因為嗰陣時失--因為我都唔知我都要上庭，同埋我嗰陣時心情唔好。

9 Q. You were not in a good mood because of what? What had  
10 put you in a bad mood?

11 A. 因為我--因為屋企裝修同埋我阿爸有病。

12 Q. Right. I will put it rather more bluntly: why did you  
13 call Mr But?

14 A. 我覺得會--無端端會話我，張相裏面嗰個係我。

15 Q. How long did this conversation last with Mr But?

16 A. 三、兩分鐘。

17 Q. Did you remonstrate with him and ask him why he sought  
18 to identify you?

19 A. 冇呀，佢淨係話會唔會係我。

20 Q. All right. Let's put aside the conversation with Mr But  
21 and go to your witness statement.

22 You tell us that in 2015 you were a construction  
23 worker, employed by Rankine or Wai Kei, and you were  
24 deployed to work for Leighton on project SCL1112.

25 Mr Ho, do you recall precisely or approximately, in

1           2015, when you were first deployed to work on the  
2           project?

3           A.   應該係9月頭我先開始入職。

4           Q.   Right. So you joined Wai Kei in early September, and  
5           your first job for them was at this site; is that  
6           correct?

7           A.   係，正確。

8           Q.   Right. Now, when you joined the project in early  
9           September, you say, I believe, that you were a general  
10          labourer at that time. Is that correct?

11          A.   正確。

12          Q.   And that you worked under the supervision and  
13          instruction of Leighton's foreman at that time?

14          A.   正確。

15          Q.   At that time, what colour helmet or hat were you given  
16          when you first started work on the project?

17          A.   黃色。

18          Q.   You go on to say in your statement:

19                 "I also assisted the foreman with work allocation."

20                 And then you say this:

21                 "After I was appointed a banksman on 30 September  
22                 2015, I was provided by Leighton the designated uniform  
23                 for a banksman, including a red helmet (before that [as  
24                 you have already told us], my helmet was yellow in  
25                 colour)."

1           Mr Ho, how do you recall that it was 30 September  
2           2015 that you were appointed a banksman?

3           A.   安全部有講，佢有張證嘅，安全部。

4           Q.   Right. Understood. So you have gone back and have  
5           looked at the permit and you've got the date from that  
6           permit?

7           A.   係，我喺安全部，問安全部攞番個幾時入--轉紅帽嘅資料。

8           Q.   Okay. So does it follow from that, Mr Ho, that up to at  
9           least 29 September, you would have been wearing a yellow  
10          hat and not a red hat?

11          A.   正確。

12          Q.   Right. Now can we please look at the photographs, at  
13          601 to start with, please. Sorry, D1/601, and please  
14          can we make sure we can see the date.

15                 Now, this photograph was taken, Mr Ho, we can see,  
16          in the bottom right-hand corner, on 4 September 2015; do  
17          you see that?

18          A.   見到。

19          Q.   The only person we can see wearing a yellow hat --  
20          sorry, and you would confirm your evidence that at this  
21          point in time you would have been wearing a yellow hat?

22          A.   正確。

23          Q.   The only person we can see in the photograph wearing  
24          a yellow hat is the worker at the back of the  
25          photograph, standing on the slightly higher level, and



1           apparently looking down; do you see that?

2           COMMISSIONER HANSFORD: There's two of them.

3           CHAIRMAN: Two.

4           MR PENNICOTT: Sorry, two. One even further back. Sorry.

5           It was obscured by my file. Even further back. Two of  
6           them.

7           Do you see that?

8           A. 見到。

9           Q. And are either of those two workers, Mr Ho, you?

10          A. 唔係。

11          Q. You're definite about that? Not they might be you, they  
12          might not be you?

13          A. 如果着呢啲衫，係中科嘅人先着呢啲衫。

14          Q. All right. That's entirely consistent, Mr Ho, with  
15          other evidence we've had.

16          CHAIRMAN: By that you mean the blue tops, do you?

17          A. 係，係，正確。

18          MR PENNICOTT: Could we go to 603, I will make sure this  
19          time -- this time, I can't see anybody in the  
20          photograph, which is also dated 4 September 2015,  
21          wearing a yellow hat; all right?

22                 Just one final question, Mr Ho. Are you sure that  
23          as at 4 September you did not have a red hat and that  
24          you would have been wearing a yellow hat?

25          A. 肯定，因為嗰陣時我係負責度水嘅啫，啱啱入去做嗰陣時。

1 CHAIRMAN: What was the photograph that was apparently  
2 recognised as showing Mr Ho?

3 MR PENNICOTT: Both of these two, sir, that we've looked at,  
4 but it's alleged he was wearing a red hat, and it seems  
5 to me, with the greatest of respect, and I have no idea  
6 what China Technology are going to say about it, if he's  
7 right and he didn't get his red hat until 30 September,  
8 none of the people in these photographs can be him.

9 CHAIRMAN: Yes.

10 MR PENNICOTT: On that basis, I wasn't proposing to ask him  
11 any more about the photographs.

12 CHAIRMAN: No, certainly.

13 Mr Ho, could I ask you, what sort of work were you  
14 doing in September for Rankine?

15 A. 應該就係戴--9月我係度水, 應該--啱啱人去做嗰陣時, 我係度水嘅。

16 CHAIRMAN: All right. Can you enlarge on that a little,  
17 give more detail?

18 A. 因為佢裏面有深水燈, 我哋要度下啲水位, 唔可以超過嗰個警界線咁嘛,  
19 我就負責半個鐘頭去check一次啲水。

20 CHAIRMAN: All right. During your time there, working in  
21 this sort of area, did you ever have to cut rebars?

22 A. 我有喺呢啲位置度工作過, 我度完水就係出泥, 我有負責做過呢啲嘢。

23 CHAIRMAN: Whereabouts did you take water measurements?

24 A. J坑同埋HKC。

25 CHAIRMAN: Okay. Yes. Thank you very much.

1 MR PENNICOTT: Sir, I've got nothing else.

2 Cross-examination by MR SO

3 MR SO: Sir, there are questions from China Technology.

4 Good morning, Mr Ho. I'm Simon So; I represent  
5 China Technology.

6 Mr Ho, can you tell us your employment status now?

7 A. 而家喺紅磡1112, 做雜工, 又係。

8 Q. So are you still employed by Rankine/Wai Kei?

9 A. 唔係, 恆利(譯音)。

10 Q. Insofar as you know, what role does this Hung Lee play  
11 in this SCL1112; do you know?

12 A. 代工囉, 又係雜工啲啲。

13 Q. We know you gave this witness statement in response to  
14 Mr Poon's third witness statement and Mr But's third  
15 witness statement.

16 Now, I'm not interested in what you talked with your  
17 lawyers, but I want to know how you came to know about  
18 your being identified by Mr Poon and Mr But. Who told  
19 you?

20 A. 邊個? 我唔記得咗。

21 Q. Mr Ho, that was something just about a month ago, and  
22 you forgot, you are telling us?

23 A. 邊個? 應該係律師講啲, 我都唔記得。

24 Q. So your evidence is some day -- one day, somebody called  
25 you and told you he is a lawyer and asked you to make

1 a witness statement, like that?

2 A. 應該係喇。

3 Q. What do you mean, "It should be like that", Mr Ho? This  
4 is something very close to today.

5 A. 我忙緊裝修咁嘛，咁我有啲嘢我唔記得啫。

6 Q. So you then made a witness statement; correct?

7 A. 正確。

8 Q. So, no doubt, you were also shown the annotated  
9 photographs produced by Mr But; correct?

10 A. 正確。

11 Q. We all know that you later phoned Mr But.

12 A. 正確。

13 Q. And your reason, you just told this Commission, was  
14 twofold. First, you did not know that he is going to  
15 attend the hearing, and second, it's that you have a bad  
16 mood. Are you serious in saying that you don't know  
17 Mr But is giving evidence?

18 A. 係，我真係唔知。

19 Q. Lawyers didn't tell you that Mr But would give evidence?

20 A. 冇，佢冇講過，我都唔知我都要作供。

21 Q. So when did you first know that you have to come to give  
22 evidence?

23 A. 應該上星期。

24 Q. So you told us you were in a bad mood, therefore you  
25 called Mr But?

1 A. 正確。

2 Q. You would agree with me, would you not, that you were  
3 never a close friend with Mr But?

4 A. 喺地盤都成日有聯絡。

5 Q. Mr Ho, I suggest to you that the whole reason why you  
6 said you were in a bad mood: because you were positively  
7 identified by Mr But.

8 A. 我覺得唔係，我阿爸有病。

9 Q. Your reason why you phoned Mr But was to try to persuade  
10 him not to identify you, is it not?

11 A. 唔係。

12 Q. There were many different helmets, different types -- of  
13 different colours, different types of helmets, on the  
14 site; correct?

15 A. 正確。

16 Q. I would have to suggest to you, on occasions, if someone  
17 had forgotten to bring their helmet, they would just  
18 simply grab any helmet on site and to work.

19 A. 有人會咁做。

20 Q. You actually did the same; correct?

21 A. 冇，我有潔癖。

22 Q. The person identified by Mr But is actually you?

23 A. 唔係。

24 MR SO: I have no further questions. Thank you.

25 MR BOULDING: No questions from MTR, sir.

1 CHAIRMAN: Thank you.

2 Cross-examination by MR KHAW

3 MR KHAW: Just two questions.

4 Mr Ho, if you can take a look at the photograph  
5 D1/228 -- obviously, we cannot see this person's face  
6 clearly. From his clothing, his helmet, et cetera, do  
7 you have any rough idea as to where this worker came  
8 from?

9 A. 唔清楚。

10 Q. 232. The same question. Can you tell us where they  
11 came from; any rough estimate?

12 A. 如果紮鐵，都係紮鐵師傅嗰班嘍喇，因為我嗰陣時係出泥，我好少會去呢  
13 啲地方睇。

14 Q. Earlier on, when you were --

15 MR SHIEH: Excuse me, I think the witness also said  
16 "我啱啱出嚟", meaning, "I have just joined the workforce"  
17 or something similar. Perhaps that can be translated  
18 also. I think the witness actually said in Chinese  
19 something to the effect of "我啱啱出嚟".

20 INTERPRETER: There's something -- that is, "I just started  
21 out", something like that.

22 MR KHAW: Just one more question. When you were earlier on  
23 answering Mr Shieh's question in relation to your  
24 witness statement, you told us that this witness  
25 statement was in fact dated 22 October 2018; do you

1 remember that?

2 A. 記得。

3 Q. You can take a look at C25785. This document, your  
4 witness statement, was actually dated 23 October. Can  
5 I just ask you whether the "23", which apparently was in  
6 handwriting, was your handwriting?

7 A. 呢個，我唔清楚，唔記得咗我都，呢啲字跡。

8 Q. Any idea why the date was not correctly stated?

9 A. 我都唔知。

10 Q. But how can you remember so clearly now that you made  
11 the statement on the 22nd, not 23 October?

12 A. 因我記得做完呢份陳述書，我先打畀畢生嘅，夜晚打，飲完啤酒打畀佢嘅。

13 MR KHAW: Thank you. I have no further questions.

14 MS CHONG: No questions from Fang Sheung.

15 CHAIRMAN: No questions from us. Thank you.

16 Re-examination by MR SHIEH

17 MR SHIEH: Very brief re-examination.

18 Just to follow up on a small point, Mr Ho.

19 Earlier on, when you gave the answer, that was in  
20 answer to the question of whether you could tell where  
21 the workers at D232 came from, and you were asked to  
22 give a rough estimate, you said you seldom went to such  
23 places, and you actually also said you had just come  
24 out, or words to that effect. Do you remember saying  
25 that?

1 A. 記得。

2 Q. What did you mean by you had just come out?

3 A. 唔係，我係嗰啲時間係帶車出泥，即係我好少會去嗰區，我哋淨係喺HKC  
4 帶啲泥車咋，淨係，嗰陣時我就係做呢啲嘢啫。

5 MR SHIEH: Thank you very much.

6 Questioning by THE COMMISSIONERS

7 CHAIRMAN: Sorry, just a final couple of questions. When  
8 you were working on site, was there any discussion ever  
9 with your fellow workers about the fact that you had to  
10 work extra hard because the construction work was  
11 falling behind?

12 A. 冇。

13 CHAIRMAN: Was there ever any discussion about how difficult  
14 certain aspects of the contract were, for example fixing  
15 the steel works and that sort of thing?

16 A. 冇，因為我嗰陣時淨係帶泥車嘅咋，即係我入職之後都係嗰幾個月淨係帶啲  
17 泥車去出泥嘅咋。

18 CHAIRMAN: I appreciate that. I'm just wondering if, you  
19 know, when you were having a chat over a break or  
20 something like that, if people said, "Wow, we're under  
21 pressure at the moment, we're falling behind"?

22 A. 唔會，因為我都唔知進度係幾時，我哋唔會知㗎嘛。

23 CHAIRMAN: All right. Thank you very much.

24 Any questions arising from that? No.

25 Thank you very much indeed, Mr Ho. Your evidence is



1 completed now; okay?

2 WITNESS: 唔該晒，唔該。

3 (The witness was released)

4 MR PENNICOTT: Sir, let's see if I can get it right this  
5 time. Would you like to have the break now or shall we  
6 get the next witness? It's coming up to 20 past.

7 CHAIRMAN: You are visiting an embarrassment upon me.

8 MR PENNICOTT: Not at all, upon myself. Perhaps we could  
9 have 15 minutes now.

10 CHAIRMAN: If you think that's a good time.

11 MR PENNICOTT: I think the next witness is going to be  
12 slightly longer than the previous one.

13 CHAIRMAN: All right. 15 minutes.

14 (11.19 am)

15 (A short adjournment)

16 (11.41 am)

17 MR SHIEH: Chairman, before the next witness is called,  
18 Leighton has just located in its internal record as to  
19 when Mr Ho Hiu Tung became a banksman, because the  
20 Commissioner will remember questions being asked as to  
21 when he became a banksman and he gave a date of  
22 30 September. He said something to the effect of having  
23 gone back to check his white card. Leighton actually  
24 has a record of when he became a banksman.

25 We have provided the documents to Lo & Lo already  
26 and I trust they will be scanned in the usual way.

1 CHAIRMAN: Thank you very much.

2 MR SHIEH: I was told that if other parties want hard  
3 copies, we can make them available, but in the short  
4 time available we have only been able to make enough  
5 copies for the Commission and then for Lo & Lo for  
6 scanning, but I'm sure they can be turned into digital  
7 form very quickly so that if anything were to turn on  
8 them, other parties can raise the matter with the  
9 Commission.

10 CHAIRMAN: Thank you very much.

11 MR PENNICOTT: Sir, I haven't seen them myself but obviously  
12 I will look at them over lunchtime.

13 CHAIRMAN: Yes.

14 MR SHIEH: It was just procured over the very brief morning  
15 adjournment, so apologies for not having enough hard  
16 copies. As I said, it's been provided to Lo & Lo and  
17 I'm sure digital copies will be made available very  
18 soon.

19 COMMISSIONER HANSFORD: Mr Shieh, rather than keeping people  
20 in suspense, can you tell us what the date is on that  
21 document?

22 MR SHIEH: 30 September.

23 MR PENNICOTT: That's a relief.

24 MR SHIEH: May I call the next witness, Ms Emily Cho.

25 Ms Cho, good morning.

26 WITNESS: 係，早晨。

1 MS EMILY CHO (affirmed in Puntì)

2 Examination-in-chief by MR SHIEH

3 MR SHIEH: Thank you. Please be seated.

4 Ms Cho, can you look at bundle C34, page 26476. The  
5 English is at 26479. Do you see that, Ms Cho?

6 A. 睇到。

7 Q. This is your first witness statement. Can you turn to  
8 page 26478 for the Chinese, and for the English it is at  
9 26481.

10 On this page, do you see, above your Chinese name,  
11 what appears to be a signature?

12 A. 係。

13 Q. That is your signature; is that correct?

14 A. 係。

15 Q. Can I then ask you to turn to bundle C35. The Chinese  
16 is 26645. The English is 26647.

17 Ms Cho, you can see this is your second witness  
18 statement; is that so?

19 A. 係。

20 Q. At 26646 -- and the English is at 26648 -- again, above  
21 your Chinese name, you can see what appears to be  
22 a signature?

23 A. 係。

24 Q. Do you confirm that you wish to put forward the content  
25 of these two statements as your evidence in this

1 Commission of Inquiry?

2 A. 我確認。

3 MR SHIEH: Thank you. Please remain seated. Lawyers for  
4 other parties may want to ask you some questions, and  
5 also Mr Chairman and Mr Commissioner may also ask you  
6 questions. After that, I may have some rounding-up  
7 questions for you; all right?

8 A. 好，明白。

9 MR SHIEH: Thank you.

10 Examination by MR PENNICOTT

11 MR PENNICOTT: Good morning, Ms Cho.

12 A. 早晨。

13 Q. I'm one of the counsel for the Commission, and I get to  
14 ask you some questions first, before anybody else.  
15 Thank you very much for coming along to give evidence  
16 this morning.

17 Ms Cho, first of all, can I ask you, please, to look  
18 at paragraph 6 of your witness statement, first witness  
19 statement. You say that you are a site clerk in the  
20 safety team for the project, and one of your duties is  
21 to maintain the project site entry/exit access system.

22 Pausing there, when you say "maintain the project  
23 site entry/exit access system", do you mean maintain the  
24 records that that system produces?

25 A. 唔好意思，我唔係好明保存相關嘅紀錄係點樣？

1 Q. Well, I'm just trying to understand what you mean by  
2 your words, "maintain the entry/exit access system",  
3 because, as I understand it from your second witness  
4 statement, you say that the system itself is maintained  
5 by a third-party service provider. So I'm trying to  
6 work out what it is that you do to maintain the system.

7 A. 意思就係我會每日都透過電腦嘅系統咁去睇番佢係咪運作正常，即係譬如  
8 有人出入嘅紀錄，因為我哋地盤一日裏面都會有好多入出入入嘅，如果個  
9 系統突然間有問題，冇咗，停咗，冇咗紀錄嘅話，我就會搵適當嘅人--同事  
10 去跟進番，或者搵番係究竟咩嘢問題，確保佢哋打卡嘅紀錄係正常嘅。

11 Q. Yes, I understand. So your role is to try to ensure, as  
12 best you can, that the system is operating properly, and  
13 your role is to identify any problems that may arise,  
14 and if those problems do arise you will either contact  
15 one of your senior managers or presumably you would  
16 contact the service provider?

17 A. 係，冇錯。

18 Q. All right. You go on to say in paragraph 6 of your  
19 first witness statement:

20 "That system records the attendance of Leighton and  
21 sub-contractors personnel."

22 Now, so far as Leighton personnel is concerned,  
23 which personnel of Leighton does the system record?

24 A. 會記錄屬於我哋禮頓嘅工人，直屬工人又或者係我哋有機會一啲職員都會用  
25 到我哋嘅掌形系統。

1 Q. Ms Cho, I ask you that question because we have heard  
2 some evidence that, for example, the superintendent of  
3 Leighton would not be recorded on this in/out system.  
4 Is that correct?

5 A. 佢哋可能會有機會唔用呢個系統嘅。

6 Q. All right. If one sort of, as it were, starts from the  
7 top and works down, you wouldn't expect the project  
8 director to sign in and out on a daily or other basis?

9 A. 係。

10 Q. And you wouldn't expect the project manager to sign in  
11 and sign out, using this system?

12 A. 係。

13 CHAIRMAN: Sorry, why is that?

14 Sorry, that was your next question?

15 MR PENNICOTT: It wasn't, but it will be in a moment.

16 CHAIRMAN: In which case, I'm being premature again.

17 MR PENNICOTT: You wouldn't expect the construction managers  
18 to sign in and sign out?

19 A. 都有呢個可能。

20 Q. As I say, you wouldn't expect the general superintendent  
21 or the superintendent to sign in and sign out using this  
22 system?

23 A. 我可唔可以另外一個方法去講嘅，就係我哋有幫佢哋做到個掌形嘅登記，但係  
24 佢哋用唔用呢個系統呢，咁唔係我嘅管轄範圍喇。

25 Q. Okay. As the Chairman asked just a moment ago, why is

1           it that these more senior people are not required -- if  
2           you know the answer to this -- why are they not required  
3           to use this system on a daily basis?

4       A.   因為呢一個系統其實最主要就係保障番啲我哋呢一個地盤工作嘅員工，佢哋  
5           有呢個出入閘嘅紀錄，萬一佢哋遇到欠薪嘅問題或者佢哋喺地盤發生啲意外，  
6           我哋都可以搵得到佢哋嘅出入時間證明去證明佢哋喺呢個地盤工作。

7       Q.   Yes. But the broad position is this, isn't it, Ms Cho,  
8           that the senior management staff of Leighton -- quite  
9           where one draws the line I confess I'm not entirely  
10           sure, but the more senior management of Leighton -- are  
11           not required, on a day-to-day basis, to sign in and sign  
12           out; there are no records of that nature?

13      A.   因為我哋有一部分嘅前線人員佢係坐喺寫字樓嘅，其實佢返工嘅時間會係直  
14           接返入寫字樓先，所以變咗就唔會係經過嗰兩邊嘅閘口。

15      Q.   All right.

16      COMMISSIONER HANSFORD: Sorry, Ms Cho, when they go to the  
17           office they wouldn't pass through the gates, but what  
18           about when they go on site? Do they then pass through  
19           those gates?

20      A.   其實喺我哋寫字樓去地盤嘅範圍，唔會經過嗰兩個閘口嘅。

21      COMMISSIONER HANSFORD: Ah. So is it possible to enter the  
22           site via the office, without going through the gate; is  
23           that what you're telling us?

24      A.   係，冇錯。

25      COMMISSIONER HANSFORD: Okay. Thank you.

1 MR PENNICOTT: Sir, the next couple of questions may assist  
2 with that enquiry.

3 Ms Cho, could I ask you, please, to be shown or to  
4 be given a hard copy of a plan, a location plan that we  
5 have at bundle F34/19757.

6 Sir, you'll recall, when you see it, that this is  
7 the plan that Intrafor provided for us, with the various  
8 fabrication yards and so forth marked on it.

9 Ms Cho, what I would like you to do, if you would,  
10 please, first of all -- you just mentioned two access  
11 gates which you refer to in paragraph 7 of your witness  
12 statement -- would it be possible, please, to mark on  
13 this plan where those two access gates are?

14 A. 唔好意思，因為我其實唔係好了解呢一幅圖嘅位置係咩嘢位置，所以我諗我  
15 唔會指得到開口係喺邊一度。

16 Q. Are you saying the plan is not big enough in the sense  
17 that it doesn't cover a wide enough area, or you  
18 simply -- it is big enough but you can't tell us where  
19 the two gates are?

20 A. 呢幅圖所指嘅範圍唔係話夠唔夠大，而係譬如紅磡體育館，咁喺呢幅圖度，  
21 我都唔係好清楚睇到喺邊個位置，所以我唔識得去話畀你聽我哋嘅開口喺  
22 邊度。

23 Q. I see. Okay.

24 Let me just try to tackle it in a slightly different  
25 way. We have -- and I don't know whether you've seen



1           it -- a recent witness statement from a Mr Ngai Chun Kit  
2           from China Technology. Is that a witness statement that  
3           you've looked at, Ms Cho?

4       A.  我有睇過。

5       Q.  Right. Now, he tells us that so far as he's aware,  
6           there were in fact three gates for entry and exit of the  
7           project site. Do you agree with that?

8       A.  如果係禮頓管轄嘅地盤出入口，我唔同意。

9       Q.  All right. Let me just put to you, explain to you, what  
10          my understanding of Mr Ngai's evidence is.

11               First of all, he says there was a gate no. 1 which  
12               was also called exit D. Does that mean anything to you?

13       A.  1號閘，我知道個位置大概喺邊度，佢所講嘅出口D，我估計佢係講緊港鐵站  
14          D出口其中一個嘅位置。

15       Q.  Okay. So gate no. 1 does mean something to you. Can  
16          you describe approximately where it is? Not by  
17          reference to the plan but just give us a general  
18          description of where it is.

19       A.  1號閘大概嘅位置就係喺港鐵紅磡站嘅D5出口，經過君蘭餅店去到最尾嘅時  
20          候，左手面就會係喺我哋嘅1號閘口。

21       Q.  Okay. Then he says that there was a gate no. 2, near  
22          what he describes as the Leighton bridge. Does that  
23          mean anything to you?

24       A.  我唔認同佢所講嘅禮頓橋，因為據我所知，佢所講嘅禮頓橋，我估計佢應  
25          該係講緊一道鐵橋，但係唔係屬於禮頓管轄嘅。

1 Q. Who manages it?

2 A. 我唔記得係港鐵定係而家五洋嘅建築公司。

3 Q. But not Leighton?

4 A. 冇錯。

5 Q. Then he says there's a gate no. 3 which is on or near  
6 the Cheong, C-H-E-O-N-G, Wan, W-A-N, Road. Does that  
7 mean anything to you?

8 A. 我知道個位置係近住殯儀館嗰邊嘅。

9 Q. And is that a Leighton entry and exit point?

10 A. 係。

11 Q. Therefore, am I right in thinking that it's gate no. 1  
12 and gate no. 3, as I've just described it to you, that  
13 have the entry and exit electronic system?

14 A. 係，冇錯。

15 Q. Right. And they both have that system?

16 A. 係。

17 Q. All right.

18 Ms Cho, you say in paragraph 8 of your witness  
19 statement, first witness statement, last sentence, that  
20 you confirm that they, that is the site attendance  
21 records, are accurate records of the monthly employee  
22 reports for China Tech personnel as generated by the  
23 system. I assume that you would apply that description  
24 to other sub-contractors: Intrafor, Fang Sheung, and any  
25 other sub-contractors?

1 A. 應該係。

2 Q. As you say, they are accurate records as generated by  
3 the system, but of course the records are only as  
4 accurate and as good as they should be if people  
5 actually use the system?

6 A. 冇錯。

7 Q. And so if workers or other personnel decide, for  
8 whatever reason, that they're not going to use the  
9 system on any particular day, clearly the records are  
10 not going to show those persons as being present?

11 A. 係。

12 Q. We have heard evidence from Mr Pun from Fang Sheung, he  
13 was the owner of Fang Sheung, and he was there just  
14 about every day, he told us, throughout the course of  
15 Fang Sheung's works, and he never used the system at  
16 all. Were you aware of that?

17 A. 我想問番，係泛迅嘅潘生定係中科嘅潘生？

18 Q. Mr Pun of Fang Sheung.

19 A. 我唔係好清楚你所講嘅泛迅嘅潘生係邊一位。

20 Q. He's the owner of Fang Sheung, Ms Cho, the boss.

21 A. 可唔可以重複一次個問題？

22 Q. Yes. Mr Pun of Fang Sheung, he's the owner, the boss of  
23 Fang Sheung, was there throughout the course of  
24 Fang Sheung's works. He spent time in the office, he  
25 visited the site on a very regular basis to inspect what

1 his workers were doing, and there's no sign of him  
2 whatsoever in the sign-in/sign-out records. Were you  
3 aware of that?

4 A. 呢個情況我唔清楚。

5 Q. All right.

6 We heard evidence from him that at one of the entry  
7 points and exit points, there was something that he  
8 described as a visitor's book which he would sign. Is  
9 that something you're familiar with?

10 A. 呢一個我唔熟悉。

11 Q. All right.

12 CHAIRMAN: Sorry, have you heard of it? Are you aware where  
13 it may be situated?

14 A. 我有聽過有人講過更亭會有呢一本簿，但係佢哋簽嘅情況又或者佢哋係咩嘢  
15 原因去簽，呢一個我唔清楚。

16 MR PENNICOTT: And it's not a book that you ever looked at  
17 or considered its contents?

18 A. 係，因為嗰個位置其實唔係屬於安全部嘅管轄範圍，所以我唔會睇得到呢一  
19 個資料。

20 Q. Right. Who would be interested in that particular book?  
21 I mean, it's there, people were signing in/signing out.  
22 Who was responsible for that book?

23 A. 據我所知，應該係以前嘅物流部。

24 Q. We are going to have another go at trying to identify  
25 where the gates are, because those that are cleverer

1           than me have found another plan.

2                    Could we please be shown on the screen  
3           bundle H2/436. We haven't got many hard copies; only  
4           two.

5                    Ms Cho, if I show you this one, which we've actually  
6           highlighted up -- okay, you've been given another one.

7                    Sir, I'll do my best to try --

8   COMMISSIONER HANSFORD: It's fine.

9   MR PENNICOTT: Ms Cho, if you look at this plan that we have  
10           here, if you go towards the top of the page you will see  
11           a line of circles with numbers in: 1/3/5/7/9; 0/2/4/6,  
12           et cetera. Then you will see the words  
13           "Salisbury Road"; do you see that?

14   A. 見到。

15   Q. Just underneath that, there's a grey area, and then just  
16           underneath that, there's a box with "Gate 1" marked in  
17           it; do you see that?

18   A. 睇到。

19   Q. Is that, gate 1, the one we were discussing just  
20           a moment ago, with the electronic system?

21   A. 如果照圖嘅指示，就係囉。

22   Q. Then, if one goes to the left of that box -- thank you  
23           very much -- you will see a line of circles, A/C/E, and  
24           to the right of those circles and letters, you will see  
25           a box, "Gate 5"; do you see that?

1 A. 睇到。

2 Q. Now, does that -- are you familiar with that entry and  
3 exit point, and does it have the electronic system?

4 A. 據我所知，呢個位置係有電子系統，而我亦都唔熟悉呢一個閘口嘅位置。

5 Q. Then if we could go to the other side of the plan,  
6 please, and towards the bottom -- Ms Cho, you might be  
7 able to see in the bottom right-hand corner  
8 an annotation, "Royal Peninsula"; do you see that?

9 A. 睇到。

10 Q. If you go diagonally, at around 10 o'clock, as it were,  
11 you'll see "Gate 3" at the end of what appears to be  
12 some form of temporary road; do you see that?

13 A. 睇到。

14 Q. Now, is that the other, the second, "Gate 3", entry and  
15 exit point with the electronic system?

16 A. 應該係。

17 Q. Thank you very much.

18 COMMISSIONER HANSFORD: Sorry. And are there any other  
19 gates? We've heard of gate 1, gate 3, gate 5. What  
20 happened to 2 and 4?

21 MR PENNICOTT: Sir, it's a bit like rebar.

22 COMMISSIONER HANSFORD: Okay. Very good.

23 MR PENNICOTT: I don't know, sir. We've failed to find  
24 2 and 4. We've only found the odd numbers.

25 COMMISSIONER HANSFORD: Okay.

1 MR PENNICOTT: Ms Cho, you are not aware of any other entry  
2 and exit points other than 1 and 3?

3 A. 據我所知，我哋禮頓嘅主要出入口都係只係得1號閘同3號閘。

4 Q. Okay. Thank you very much.

5 Now, returning to the records --

6 CHAIRMAN: Sorry, could I just ask one thing?

7 MR PENNICOTT: Of course.

8 CHAIRMAN: When you took up this job, were you told what the  
9 main purpose of the computerised system for governing in  
10 and out was?

11 A. 我淨係知道當我第一日返工嘅時候，我就知道呢--入呢個地盤工作嘅人都要  
12 做一個掌形登記，佢哋落堂嘅時候就要確保佢哋係用到我哋嘅系統去打卡。

13 CHAIRMAN: All right. But do they -- because what you have  
14 indicated, perhaps, is that the purpose was to ensure  
15 that employees would be registered going in and going  
16 out for purposes of salary or pay, and/or so that you  
17 knew who was in there working at any one time, for  
18 safety reasons. Would that be right?

19 A. 我聽到我哋嘅導師喺安全堂嘅時候同番上堂嘅人係解釋番點解要佢哋出入都  
20 拍卡，就係確保佢哋有呢一個紀錄，如果佢哋萬一遇到欠薪嘅問題或者佢哋  
21 咁唔好彩喺地盤遇到意外，我哋會可以幫佢哋有一個紀錄，證明佢哋係喺呢  
22 個地盤度工作。

23 CHAIRMAN: All right. Yes. So certain people whose salary  
24 or whose wages or whose income was not governed by the  
25 number of hours that they worked on site didn't need to

1 register?

2 A. 唔係，係全部上地盤堂，第一日上地盤入職堂嘅時候都要登記。

3 CHAIRMAN: Ah. So if you didn't attend that first day, then  
4 you didn't need to?

5 A. 我唔清楚有冇一啲公司嘅員工係偷雞唔上堂而喺我哋嘅地盤度工作。

6 CHAIRMAN: Okay. Thank you.

7 MR PENNICOTT: Ms Cho, I understand that one thing that  
8 would happen, on an essentially monthly basis, is that  
9 you would send out the site attendance records from the  
10 electronic system to each of the sub-contractors that  
11 Leighton had engaged. Is that correct?

12 A. 呢個講法唔啱，因為呢一個動作係前同事負責嘅，我有傳過電郵畀其他分  
13 判商。

14 Q. I'm not sure whether something got lost in translation  
15 there. The monthly records that the electronic system  
16 recorded for each sub-contractor, were they sent out to  
17 the sub-contractors, those records, on a monthly basis?

18 A. 呢啲紀錄發畀分判商嘅動作唔係經我去做嘅。

19 Q. Okay. Were you --

20 MR SHIEH: Excuse me, there may be a subtle difference in  
21 nuance between two senses of a phrase used by the  
22 witness, because the witness used the Chinese phrase  
23 "前同事", which could mean predecessor or it could mean  
24 an ex-colleague who had already left.

25 MR PENNICOTT: Thank you very much.



1 Ms Cho, you say that the act of sending the records  
2 to the sub-contractor was not done by you, and I'm happy  
3 to accept that. Were you aware that somebody else sent  
4 the records to the sub-contractors?

5 A. 據我所知，行政部之前係有同事做過呢個動作，但係到到而家仲有冇，我就  
6 唔清楚。

7 (Discussion off the record)

8 Q. So it was the administration department, so far as you  
9 are aware, that would send out the records to the  
10 sub-contractors?

11 A. 之前佢哋係有呢個動作。

12 Q. Right. Because China Technology, at least, have  
13 provided to the Commission, attached to Mr Ngai's  
14 witness statement that I referred to earlier, copies of  
15 the electronic records that they say were sent to them  
16 on a monthly basis. Do you understand?

17 A. 我明白。

18 Q. And what Mr Ngai points out in his witness statement,  
19 which I think you indicated to me earlier you had read,  
20 are various discrepancies between the records that China  
21 Technology have in their possession and the records that  
22 Leighton have provided to the Commission in respect of  
23 China Technology's attendance at the site. Do you  
24 understand the point?

25 A. 我明白。

1 Q. I would just like to see, Ms Cho, whether you are able  
2 to help us with those discrepancies. This is not going  
3 to be easy on the screen but we will do our best. I'm  
4 only going to take two examples; there are many,  
5 however.

6 Could I ask you, please, first of all, to be shown  
7 D2/1153. That is the first page of the month of  
8 November, from the records attached to Mr Ngai's  
9 statement.

10 Could we please compare that with bundle C8/5738.

11 COMMISSIONER HANSFORD: Sorry, is the -- ah, yes. My  
12 question is being answered.

13 MR PENNICOTT: Now, Ms Cho, you've got the hard copies in  
14 front of you, which is going to make life easier for  
15 you. If we can first of all look at 4 November; do you  
16 see that? And on D1153, which are the records that  
17 China Technology provided us with, printed out on  
18 1 December 2015, top-right corner, the entirety of  
19 4 November is blank; do you see that? If you draw a  
20 highlight down the line, nobody is there on 4 November;  
21 do you see that?

22 A. 見到。

23 Q. Whereas on C5738, for the same day, one can see that  
24 a number of workers are present on this particular  
25 sheet, about eight -- seven workers; do you see that?

26 A. 見到。

1 Q. Are you able to explain the difference or discrepancy,  
2 apparent discrepancy, between the two sheets?

3 A. 由於15年嗰份報告唔係我去傳畀中科嘅，所以我唔清楚佢係喺咩情況之下  
4 撤呢份報告。

5 Q. All right. Just to, as it were, look at another one on  
6 the same sheet, if you look -- and it's really the  
7 reverse situation -- if you look at 26 November, on the  
8 China Technology sheet at 1153, you will see five  
9 workers in attendance; do you see that, 26 November?

10 A. 11月26號有五名工人在場。

11 Q. Whereas, on the document that Leightons have provided us  
12 with at C5738, all the entries are blank, so a reverse  
13 situation to the previous one.

14 Again, Ms Cho, are you able to explain why there is  
15 such a difference?

16 A. 因為呢一啲報告其實都係需要撤幾個掣，佢就會自動出嚟嘅，唔經過人手去  
17 加工，所以我唔清楚。

18 Q. Right. Could I ask you, please, to look at -- hang on,  
19 before we go there, sorry, can we just stick with 1153,  
20 another example of a discrepancy.

21 If you look at the very first worker recorded on  
22 1153, an Au Hin Ting; do you see him?

23 A. 見到。

24 Q. And that worker is there registered, or signed in/signed  
25 out, for 5 and 6 November; do you see that?

1 A. 見到。

2 Q. And in the "Work day" figure on the right-hand side  
3 reflecting those two sign-in/sign-out days, is "2"; do  
4 you see that?

5 A. 見到。

6 Q. Whereas if you look at the Leighton record at C8/5738,  
7 that same worker is there not just for those two days  
8 but also for a third day; do you see? So a slightly  
9 different discrepancy this time.

10 A. 見到。

11 Q. Are you able to explain that discrepancy?

12 A. 都係正如我頭先所講，因為呢啲報告都係喺個系統度揀出嚟，唔係經過人手  
13 加工，所以呢個情況我唔清楚。

14 Q. Okay. Before I trouble you further, Ms Cho, let me just  
15 see whether I need to.

16 I will, just to raise one point with you. Could you  
17 please be shown D1129. That's D2/1129. Compare that,  
18 please, with C8/5713. These are the two sheets for --  
19 the first sheet for September 2015.

20 The first point to note, Ms Cho, is if you look at  
21 the China Technology print-out, the third general worker  
22 down is somebody called Chan Kit; do you see that?

23 A. 睇到。

24 Q. If you look at the Leighton record, at 5713, that worker  
25 does not appear at all, so far as I can tell. Can you

1 explain that one, Ms Cho?

2 A. 有可能係嗰個員工佢轉咗公司，所以啲資料就會跟咗去佢新公司個名嗰度。

3 Q. I see. That's what happened, I remember, to Mr Law, is  
4 that right, that we were hearing from earlier, that when  
5 he transferred ultimately to China Technology, all his  
6 previous records, even if he had worked for other  
7 sub-contractors, would come under China Technology; is  
8 that the way the system works?

9 A. 會有咁嘅情況。

10 Q. Right. So that could be an explanation for why Mr Chan  
11 Kit does not appear. All right.

12 COMMISSIONER HANSFORD: Sorry, how is that an explanation?

13 MR PENNICOTT: Sir, if this worker, Chan Kit, was there --  
14 let me get this around the right way -- at the time, in  
15 September 2015, and this monthly record was sent out to  
16 China Technology, and they printed it out, that's why he  
17 appears on the document they have.

18 Are you with it so far?

19 COMMISSIONER HANSFORD: I am, yes.

20 MR PENNICOTT: What then happens is that if Mr Chan Kit  
21 subsequently moved to another sub-contractor, let's say,  
22 he moved from China Technology to Fang Sheung, all his  
23 previous records would then fall under Fang Sheung,  
24 irrespective of time, on the Leighton system. So, if  
25 this is the Leighton print-out which we know was printed  
26 this year, that might explain that discrepancy.

1 COMMISSIONER HANSFORD: I follow the logic. Thank you.

2 MR PENNICOTT: Have I got that right, Ms Cho?

3 A. 喺。

4 MR PENNICOTT: Sir, I spent perhaps a disproportionate  
5 amount of time going through that. I've also spent  
6 a disproportionate amount of time looking at all of  
7 these records, and I'm afraid -- I'm not making a big  
8 point of this -- there are similar discrepancy  
9 discrepancies, as Mr Ngai has pointed out, all over the  
10 place, irrespective of where you look. Whichever month  
11 you look at, you are going to get the same sort of  
12 problems time and time again, and that's as far as I can  
13 take it. I'm not proposing to ask Ms Cho any further  
14 questions.

15 CHAIRMAN: Thank you very much.

16 MR TO: Chairman, China Technology has a few questions to  
17 ask Ms Cho.

18 CHAIRMAN: Yes, certainly.

19 Cross-examination by MR TO

20 MR TO: Good morning, Ms Cho. I represent China Technology.

21 My name is Christopher To. I have a few questions to  
22 ask you.

23 My learned friend Mr Ian Pennicott this morning  
24 asked you about the word "maintain". Can you remember  
25 that word?

26 A. 記得。

1 Q. Can you explain to us what did you do in terms of  
2 "maintain"?

3 A. 就係每一日個系統運作正唔正常。

4 CHAIRMAN: I took it, Mr To, that she's really talking about  
5 monitoring, as opposed to maintaining in a technical  
6 sense. So she's not the person who fixes the things  
7 that go bang in the night; she is the person who  
8 monitors the system and if it falls down, she then goes  
9 to the technology backup people.

10 MR PENNICOTT: I thought her answer was pretty clear.

11 MR TO: Thank you, Chairman, on that.

12 I just want to ask you, Ms Cho -- so you maintain --  
13 do you actually submit forms GF257? Are you familiar  
14 with that form?

15 A. 唔熟悉。

16 Q. Are you familiar with a form called DAR?

17 A. DAR嘅表格。

18 Q. It's called daily attendance record.

19 A. 我想問番係提交畀邊一方面?

20 Q. You have to submit it to a certain authority. Do you do  
21 that?

22 A. 我想問番你係咪所講每一個星期都要提交番個紀錄?

23 Q. Yes, that's what I'm asking.

24 A. 如果呢一個紀錄嘅話,係由我去提交嘅。

25 Q. Who do you give that document to?

1 A. 交番畀建造業議會嗰面。

2 Q. (Overspeaking the interpreter) For what purpose?

3 COMMISSIONER HANSFORD: I'm sorry, you are going to have to  
4 stop so we get the reply before asking the next  
5 question. Thank you.

6 MR TO: Sorry.

7 For what purpose?

8 A. 以我所知，所有建築公司都要提交呢一個紀錄。

9 Q. Are the records supposed to be accurate?

10 A. 嗰啲紀錄都係喺個系統嗰度搵出嚟嘅啫。

11 Q. Can I take you to the transcript, Ms Cho, of Mr Cheung  
12 Chiu Fung, Joe, at Day 15, page 64, line 17. I will  
13 read it out slowly to you, so it can get translated:

14 "Question: Now I wish to bring you to C6379. This  
15 is the December sign-in/sign-out record. We cannot find  
16 your name on this sign-in/sign-out record. Can you tell  
17 us, if you know, what is the reason of that?

18 Answer: I'm not sure about this record.

19 Question: I see. This situation similarly occurred  
20 on page C6372. This is the November sign-in/sign-out  
21 record, and again your name was not there. Do you know  
22 the reason of it, if you know?"

23 And your answer on the next page is --

24 MR PENNICOTT: It's not her answer.

25 MR TO: -- "I don't remember. Perhaps by that time

26 I already had a vehicle and I just drove in and out of



1 the site."

2 Ms Cho, you were asked certain questions about, for  
3 example, entries. When Mr Cheung mentioned driving in,  
4 did he mention gate 5?

5 A. 據我所知，應該係3號閘。

6 Q. Can I take you to another transcript. This is Mr Jason  
7 Poon on Day 11, page 115, line 9. I will just read it  
8 out slowly:

9 "Question: But can you tell us, by looking back at  
10 that diagram, C8/6172, is there any sign-in/sign-out of  
11 your name?

12 Answer: No, no.

13 Question: Can you tell us something about that?

14 Answer: Because I did not use the card. I did not  
15 punch -- I didn't use that palm print device to go  
16 inside. I went through the D5 gate which is the  
17 vehicular access.

18 Question: So, in a way, you went in there through  
19 another sort of entry point?

20 Answer: It's next to the sign-in/sign-out device  
21 and I could go through the vehicular access. I parked  
22 my car inside the site. That's why I didn't have to go  
23 through this process."

24 Ms Cho, so there was another entry point into the  
25 site without going through the palm-printing device; is  
26 this correct?

1 A. 我估計佢所講嘅D5閘口應該都係喺1號閘個位置。

2 Q. Can you go into the site without putting your palm into  
3 the device, to record it?

4 A. 佢哋入閘嘅情況我唔清楚，因為我唔會喺嗰個位置嗰度睇住佢哋出入。

5 Q. Can I ask you another question, Ms Cho. The question  
6 is -- can you look at document D1565, in particular  
7 D1576, in particular 6.1.

8 I will just read it out to you, 6.1:

9 "Leighton safety officer Max Chan reminded all  
10 sub-contractors that:

11 Please ensure your workers with daily computerised  
12 attendance record as some of the computerised attendance  
13 records were totally different from what sub-contractors  
14 reports."

15 Do you understand why Mr Max Chan or someone said  
16 that?

17 A. 我估計佢咁樣講係想提醒番啲分判商嘅代表，去提佢哋嘅員工去拍番卡。

18 Q. Also, if you go to the same document, item 6.2, just  
19 below -- I will just read it out to you:

20 "Leighton safety officer trainee Ben Hui reminded  
21 all sub-contractors that:

22 ...

23 c. Remind all workers entered site area should be  
24 use palm recorder."

25 What does he mean by that?

1 A. 就係照字面嘅解釋，提番佢哋去提醒佢哋嘅員工要拍卡出入。

2 Q. My last question is: only construction workers who are  
3 registered with the Construction Industry Council are  
4 required to use palm print for entry into the site;  
5 am I correct in saying that?

6 A. 唔啱，因為如果佢哋冇工人註冊證嘅話，我哋係會發一張我哋俗稱嘅白卡  
7 去畀佢哋用我哋嘅系統去出入嘅。

8 Q. (Overspeaking the interpreter) But if they forget to  
9 bring the white card?

10 COMMISSIONER HANSFORD: I'm sorry, you are continually doing  
11 that and I'm not able to get the answer. Thank you.

12 A. 如果佢哋唔記得帶張卡，呢個情況我控制唔到。

13 MR TO: Can they still go into the site if they don't have  
14 the card?

15 A. 如果之前所講，佢哋喺更亭嗰個出入嘅情況，我唔清楚。

16 Q. (Overspeaking the interpreter) So they can go through  
17 the guard entry? Sorry.

18 COMMISSIONER HANSFORD: Could you repeat the question?

19 MR TO: I will repeat the question.

20 If they don't have a white card, can they still gain  
21 entry to the site?

22 A. 佢哋冇白卡，就應該係冇工人註冊證。

23 Q. But if they don't have a construction workers card?

24 A. 如我之前所講，如果佢哋冇註冊證，我哋就會發一張白卡畀佢哋。

25 Q. If they don't bring their white card to go in, can they

1 still go into the construction site?

2 A. 其實我頭先亦都答過，呢一個佢哋唔記得帶卡嘅情況唔係我控制嘅範圍。

3 Q. So how can they go into the site?

4 A. 佢哋進入地盤嘅情況唔係我工作範圍之內，我唔清楚。

5 Q. You mentioned about a guard entry point.

6 A. 係。

7 Q. What is that?

8 A. 我哋兩個主要嘅出入口都會有一個更亭，係畀啲secure去喺嗰度工作嘅。

9 Q. Can they go past the security guard post, if they don't  
10 have the card?

11 A. 我頭先亦都解答過，我唔清楚佢哋入閘嘅情況。

12 MR TO: Thank you, Ms Cho. No further questions.

13 MR BOULDING: No questions from MTR, sir.

14 CHAIRMAN: Thank you very much.

15 MR KHAW: No questions from the government.

16 CHAIRMAN: Thank you.

17 MS CHONG: No questions from Fang Sheung.

18 CHAIRMAN: Thank you.

19 Re-examination?

20 MR SHIEH: No re-examination.

21 CHAIRMAN: Thank you.

22 Peter, anything?

23 COMMISSIONER HANSFORD: No, nothing from me.

24 CHAIRMAN: Thank you very much.

25 Thank you, your evidence is completed now. Thank

1           you.

2       WITNESS: 唔該晒，好，唔該。

3                               (The witness was released)

4       COMMISSIONER HANSFORD: Can I make an observation here,  
5           Mr Pennicott? Sorry, I'm referring to you because I'm  
6           not quite sure who else I should refer to.

7       MR PENNICOTT: That's all right. That's what I'm here for.

8       COMMISSIONER HANSFORD: But if Cantonese-speaking counsel  
9           were to wear their headphones when they ask their  
10           questions, I think they might then understand the need  
11           for the pause before asking the next question, because  
12           it's quite obvious to me when I'm wearing the headphones  
13           that a pause is necessary.

14       MR PENNICOTT: That's right. Alternatively, and/or look at  
15           the transcript.

16       COMMISSIONER HANSFORD: That's the other way.

17       MR PENNICOTT: I appreciate it must be very difficult for  
18           those who are bilingual and of course they've heard the  
19           answer and they just want to get on with the next  
20           question. I understand it must be very difficult. But  
21           you are right, sir. It was a bit unfortunate there; we  
22           were missing the end of most answers.

23       COMMISSIONER HANSFORD: But it's happened a few times.

24       MR PENNICOTT: It has, sir, yes.

25       COMMISSIONER HANSFORD: Okay.

26       MR PENNICOTT: Sir, the next witness is Mr Ngai. Perhaps it

1 would be appropriate to break early today and then start  
2 perhaps a little bit earlier. Whilst I think Mr Ngai is  
3 going to be pretty quick, I'm not convinced nine minutes  
4 is going to be enough. Perhaps we can come back at  
5 10 past or --

6 CHAIRMAN: All right. 2.10.

7 (12.53 pm)

8 (The luncheon adjournment)

9 (2.13 pm)

10 MR TO: Good afternoon, Mr Ngai. Can you tell the Chairman  
11 and the Commissioner your name in full, please?

12 WITNESS: 我個名係倪俊傑。

13 MR NGAI CHUN KIT (affirmed in Puntì)

14 Examination-in-chief by MR TO

15 MR TO: Mr Ngai, I'm going to take you to a document. It's  
16 D2/D1112.

17 A. 係。

18 Q. Mr Ngai, this is your witness statement; correct, or not  
19 correct?

20 A. 係。

21 Q. Can I take you to the last page, D1116. Can you see  
22 page D1116?

23 A. 見到。

24 Q. Is that your signature on this page?

25 A. 正確。

1 Q. The date of this witness statement is 7 November 2018;  
2 is this correct?

3 A. 喺。

4 Q. Mr Ngai, do you wish to adopt this witness statement as  
5 part of your evidence?

6 A. 會。

7 MR TO: Mr Ngai there are going to be lawyers here in this  
8 room who will ask you some questions, so I will hand it  
9 over to them now. Speak slowly because it's being  
10 translated.

11 WITNESS: 清楚，唔該。

12 Examination by MR PENNICOTT

13 MR PENNICOTT: Mr Ngai, good afternoon. My name is Ian  
14 Pennicott.

15 A. 午安。

16 Q. I'm one of the counsel for the Commission, and I've got  
17 I think just one question for you or at least one topic  
18 for you.

19 Please could you be shown bundle H2/436. You are  
20 being given a hard copy of this document, Mr Ngai.

21 A. 望到。

22 Q. In your witness statement, you refer to three gates,  
23 gates 1, 2 and 3, and you give them alternative  
24 descriptions as well; that is, the exit D, the Leighton  
25 bridge, and Cheong Wan Road; all right? Those are the

1 three alternative descriptions you give.

2 If you would be good enough to look at this plan,  
3 please, you will see, towards the top, some circles with  
4 numbers in; do you see 0/2/4/6?

5 A. 見到。

6 Q. And underneath you will see "Salisbury Road" and  
7 underneath that you will see a box with "Gate 1"; do you  
8 see that?

9 A. 睇到。

10 Q. Is that your gate 1, exit D?

11 A. 正確。

12 Q. Okay. If you go to the left of that, "Gate 1", and go  
13 over to the circles with the letters in, A/C/E, to the  
14 right of that you will see a box with "Gate 5" in it; do  
15 you see that?

16 A. 見到。

17 Q. Is that what you describe as gate 2 or the Leighton  
18 bridge?

19 A. 唔係。

20 Q. Right. So is that your gate 3 on the Cheong Wan Road?

21 A. 都唔係。

22 Q. Okay. You tell us where your gate -- first of all, tell  
23 us where your gate 2 is, please, on this plan.

24 A. 請等一等，我望一望。大約喺圖嘅呢個位置左右 (indicating)。

25 Q. Sorry?



1 A. Here (indicating).

2 Q. That's your gate 2, is it?

3 A. 係。

4 Q. So the witness has pointed to the corner, approximately,  
5 of the dotted line, about 2 inches to the right of the  
6 words "Victoria Harbour", and has marked it on the plan.

7 All right, that's your gate 2. Where is your  
8 gate 3, Mr Ngai?

9 A. 同圖上面嘅 "gate 3" 係一樣位置嘅。

10 Q. All right. So your gate 3 is the "Gate 3"? All right.

11 A. 正確。

12 Q. Thank you very much.

13 Now, this gate 2 that you have identified for us,  
14 was that something, to your knowledge, an entry and  
15 an exit point, that was there throughout the course of  
16 your involvement with this project?

17 A. 呢個地盤可以出入閘口--可以出入地盤。

18 COMMISSIONER HANSFORD: Mr Ngai, was there a gate 4?

19 A. 我唔清楚，呢個就，我知道就係1、2、3。

20 COMMISSIONER HANSFORD: Thank you.

21 MR PENNICOTT: So we appear to be in the position that we  
22 are agreed there are three gates, two we agree their  
23 position, and one there is a difference between yourself  
24 and Ms Cho and indeed this plan. All right.

25 Thank you very much, Mr Ngai. I have no further

1 questions.

2 WITNESS: 好，唔該你。

3 MR CHANG: Mr Chairman, I am not Paul Shieh SC. I am  
4 Jonathan Chang. I appear for Leighton. I have some  
5 questions for this particular witness.

6 CHAIRMAN: Yes, certainly.

7 Cross-examination by MR CHANG

8 MR CHANG: Mr Ngai, can you turn to your witness statement,  
9 bundle D2, paragraph 17. The second line, towards the  
10 end, we can see you saying "many sub-contractors  
11 blatantly ignored the system", being Leighton's  
12 electronic site access system. Can you see that?

13 A. 見到。

14 Q. I assume that would not include China Technology;  
15 correct?

16 A. 唔。

17 Q. Sorry, the mic can't pick up a nod, so do you agree or  
18 disagree? When you say many sub-contractors blatantly  
19 ignored Leighton's electronic site access system, that  
20 did not include workers from China Technology; correct?

21 A. Sorry, 可唔可以--個翻譯可唔可以翻譯多一次?

22 唔包，唔包。

23 Q. In other words, China Technology would instruct its  
24 workers to abide by and follow the Leightons electronic  
25 site access system; correct?

1 A. 係。

2 Q. May the witness be shown the transcript of Day 7,  
3 page 45, lines 8 to 11. I will read it out so that the  
4 interpretation can be made to you. It's Mr Jason Poon's  
5 evidence on Leighton's site attendance or  
6 sign-in/sign-out records. Mr Poon's answer was:

7 "Our personnel department at the end of each month  
8 would ask Leighton for the record. Usually the record  
9 would be provided at the beginning of the month for the  
10 purpose of paying wages."

11 A. 係。

12 Q. So you accept China Technology received monthly records  
13 or site attendance records from Leighton, to enable  
14 China Technology to prepare its payroll?

15 A. 係。

16 Q. Is it your evidence that the monthly records which China  
17 Technology received from Leighton, they are all  
18 inaccurate?

19 A. 可唔可以翻譯多次?

20 同意。

21 Q. If they are all inaccurate, how can China Technology  
22 rely on these site attendance records which they  
23 received from Leighton for the purpose of preparing  
24 payroll, to actually prepare the payroll?

25 A. 因為呢個紀錄係唔準確嘅，咁但係因為基於我哋就算有啲工人之後離開咗我

1 嗰個公司，追我哋出番糧，都base on呢個record嘅，所以我哋自己為咗  
2 更加令--除咗呢樣嘢準確之外，我哋自己內部都會有個WhatsApp group，  
3 係啲科文會報番啲工人返工嘅日子、時間咁嘅嘢，就兩樣嘢加埋嘅，因為呢  
4 個係唔準確，所以就信唔晒。

5 Q. So, if I understand your evidence correctly, China  
6 Technology's own records will be a combination of the  
7 monthly records which you receive from Leighton and the  
8 additional information which you received through  
9 WhatsApp from the workers; correct?

10 A. 正確。

11 Q. So China Technology itself would have the most accurate  
12 site attendance record of all its employees; correct?

13 A. 係。

14 Q. And it would be based on China Technology's own record  
15 that you prepared the payroll for your employees;  
16 correct?

17 A. 係。

18 Q. May the witness be shown bundle C8, page 5720. This is  
19 Leighton's site attendance records for China Technology  
20 employees, covering the period of the month of September  
21 2015.

22 Mr Ngai, you can see Mr Poon Chuk Hung's name as the  
23 second-last entry at the bottom. Can you see that?

24 A. 見到。

25 Q. Can you then go to 22 September, which is slightly

1 towards the right. There is no entry recorded in this  
2 document for that day; correct?

3 A. Mmm.

4 Q. You will have to say "yes".

5 A. 喺文件上面，係。

6 Q. Can I ask you this: China Technology has been unable to  
7 produce any document from its own, most accurate record,  
8 to show that Mr Poon was in fact on site on that day;  
9 correct?

10 A. 呢個我唔清楚，係。

11 Q. Sorry, when you say you are not certain, are you  
12 suggesting China Technology has such records or does not  
13 have such records?

14 A. 唔清楚有冇，因為最主要潘焯鴻先生係我老闆，係唔會有--唔需要幫佢計糧，  
15 所以就未必會有佢紀錄，因為個紀錄主要都係啲工人。

16 Q. Mr Poon never emailed or WhatsApped any records which he  
17 took from the sign-in logbook at the security guard post  
18 to your WhatsApp group, correct, for that particular  
19 day?

20 A. 冇嘅，冇嘅，佢唔需要畀我嘅。

21 Q. Now, if I can summarise your evidence correctly. So far  
22 China Technology has no evidence to show that Mr Jason  
23 Poon was in fact on site on that day. Leaving aside  
24 whether it is necessary for Mr Poon to provide the  
25 evidence, you have no evidence whatsoever to suggest he

1 was on site?

2 A. 喺呢個hand key上面係睇唔到佢。

3 Q. I'm asking you about China Technology's own records,  
4 which you confirmed with the Commission you kept the  
5 most accurate records?

6 A. 冇嘅，因為係唔需要記錄潘先生個--潘先生係唔需要記錄嘅，因為佢係  
7 老闆嚟嘅。

8 Q. So are you suggesting there is no record whatsoever of  
9 Mr Poon's presence on site at all, at any time?

10 A. 喺我嗰個--喺我嘅文件上面就有。

11 Q. Now, can I ask you to turn to -- may the witness be  
12 shown 6172 of the same bundle.

13 This is Leighton's site attendance record, covering  
14 the month of September 2017.

15 A. Mmm.

16 Q. These records are arranged in alphabetical order, so if  
17 Mr Poon's name were to be found, it should be found on  
18 this page, but we can see none; can you see that?

19 A. 睇到。

20 Q. Again, can I ask you this: does China Technology have  
21 any record in its own system to show that Mr Poon was  
22 on site on 16 September 2017?

23 A. 我想問點解呢個hand key唔係fully嘅？我睇一睇。

24 Q. If you want to have a complete reading of the records,  
25 the records covering the month of September start from

1 6170, and it ends at 6173.

2 A. Okay, 你問多次個問題, 唔好意思。

3 Q. For the month of September, there was no record of  
4 Mr Poon's attendance on site?

5 A. 喺掌紋紀錄, 係。

6 Q. My question is: from China Technology's own internal  
7 record, there is also no evidence or record that Mr Poon  
8 was on site on 16 September 2017; correct?

9 A. 喺個文件上, 係。

10 Q. For these two dates which I have covered with you,  
11 22 September 2015 and 16 September 2017, are you able to  
12 suggest any reason why Mr Poon could be on site on that  
13 day, according to China Tech's own internal records?

14 A. 因為潘先生嘅習慣, 返地盤佢揸車, 所以佢係唔會有--有陣時係唔會有任何  
15 掌紋喺個紀錄上面, 佢揸車入閘, 佢就會入咗去, 佢泊低架車, 佢就行落個  
16 地盤度, 係唔需要經過呢樣嘢。第二樣嘢, 如果佢去禮頓寫字樓, 有陣時可  
17 能朝早去禮頓寫字樓開會或者點呢, 就會行gate 2, gate 2係唔會有任何  
18 打卡紀錄, 亦唔會有任何打卡嘅system嘅, 咁係囉, 因為佢有陣時成日都朝  
19 早要過一過禮頓度開會咁嘅情況。

20 Q. My question is: could you suggest any reason why Mr Poon  
21 was on site on those two days, according to China  
22 Technology's own internal records? I'm not asking you  
23 any reason why his attendance would not be captured in  
24 these documents.

25 A. 我唔知點解佢嗰兩日要去地盤, 佢要嚟--佢每日都會嚟地盤, 冇話特別邊

1 兩日。

2 Q. So your evidence is that these records from Leighton  
3 were inaccurate. Did China Technology ever make any  
4 attempts to correct them with Leighton?

5 A. 冇嘍，禮頓係用嗰啲system gen.呢啲PDF畀我哋，所以我有得去修正或者  
6 點。

7 Q. China Technology received these records from Leighton on  
8 a monthly basis?

9 A. 係。

10 Q. China Technology's stance is that these records were  
11 inaccurate?

12 A. 係。

13 Q. So did China Technology make any attempt to correct  
14 these records with Leighton, at any time?

15 A. 我哋淨係話自己再內部，惟有自己內部加個WhatsApp group，咁希望將  
16 嗰啲工人啲工數去更加可以清楚，因為最主要呢個掌紋紀錄只係for我哋  
17 出糧嘅一個reference，係喇。

18 Q. So it's China Technology's evidence that China  
19 Technology never, upon receiving these records, never go  
20 back to Leighton and say, "Ah, these entries were not  
21 inaccurate [sic]", and ask Leighton to explain or  
22 update?

23 A. 冇嘍，呢啲打掌紋紀錄不鏟都係唔準確嘅，即係個個都知，亦都好多人係  
24 未必打卡就入去地盤做嘢，亦都係。

25 CHAIRMAN: Can I ask, how did you ensure accuracy for



1 purposes of paying wages, then?

2 A. 首先，我哋就會先用咗呢個紀錄做個basic，之後就再會喺個internal  
3 我哋有個WhatsApp group，有啲科文就會講番每個工人大約邊啲嘢會有  
4 加班點點嘅情況，有冇特別嘅情況，我哋就會將兩樣嘢去擺埋落去，就去  
5 計呢個糧款出去嘅。

6 MR CHANG: So you just accept whatever your workers told you  
7 over the WhatsApp group as their site attendance record;  
8 correct? Is that your evidence?

9 A. 會嘅，因為佢哋如果有陣時有啲卡問題，亦都影埋佢張相喺個更亭門口簽咗個  
10 名、咩嘢事，有埋啲名，佢會畀番我哋，亦都係做一個reference嘅。

11 Q. And China Tech would not review these additional  
12 information with Leighton; is that your evidence?

13 A. 係。

14 Q. Is there any particular reason why China Technology did  
15 not do so, so as to verify whether your own workers were  
16 giving you the correct information?

17 A. 你可唔可以問多次？唔好意思。

18 Q. Your evidence is, if I understand correctly, China  
19 Technology will not verify with Leighton these  
20 additional attendance records which your workers  
21 submitted through WhatsApp. My question is, if China  
22 Technology did not verify these additional information  
23 with Leighton, how would China Technology be able to  
24 confirm that these records provided by your workers were  
25 accurate?

1 A. 應該咁講，嗰個WhatsApp group就只係得啲科文、管理層嘅層次嘅人嘅，  
2 就唔係有員工，看來呢度有啲誤會咗，你哋。員工係會將佢嘅紀錄畀科文，  
3 科文確認咗，之後先會喺個WhatsApp group度send畀我哋睇，即係send  
4 番畀我哋admin.呢面度睇嘅。如果公司信得過工人，畀得個管工嘅職位佢  
5 做，我哋都會信佢。

6 Q. Can you tell us how would the foremen verify the  
7 information?

8 A. 科文會見到佢哋有冇開工，會知道佢哋做嘢嘅位置，從而就核實喇。

9 Q. On a daily basis?

10 A. 係。

11 Q. Is there any document to record such daily verification  
12 by the foremen?

13 A. 我唔知科文自己有冇紀錄，我就冇。

14 Q. Does China Technology keep any record of this kind of  
15 daily verification by its foremen?

16 A. 冇。

17 Q. Can I refer you to Ms Emily Cho's second witness  
18 statement. It's in bundle C34, page 26645. The English  
19 version starts from 26647.

20 Have you had a chance to go through this witness  
21 statement before today?

22 A. 第二份冇，第二份冇。

23 Q. Can I refer you to paragraph 4 of this witness  
24 statement. You can read Chinese; correct?

1 A. 係，中文okay。

2 Q. Can I trouble you to read to yourself the whole of  
3 paragraph 4, where Ms Cho explains the colouring in  
4 Leighton's site attendance records and the work hours.

5 A. 係，睇完。

6 Q. I'm asking you to read this paragraph because in  
7 paragraph 15 of your witness statement, you questioned  
8 the records when you queried the number in the "Work  
9 day" column doesn't match the monthly entries, and there  
10 is also the query about the markings in red.

11 My question is, having read paragraph 4 of Ms Cho's  
12 second witness statement, do you accept her explanation  
13 to be accurate?

14 A. 唔準確。

15 Q. Can you tell the Commission why and which part of her  
16 explanation do you not accept as accurate?

17 A. 你可唔可以直情擺一份例如15年嘅11月掌紋出嚟畀我？如果唔係，我好難  
18 解釋到畀委員會聽。

19 Q. I can refer you to Mr Poon's site attendance record  
20 which was what Ms Cho was addressing. That's at  
21 bundle C8/5720, the second-last entry at the bottom,  
22 "Poon Chuk Hung". Can you see that?

23 A. 係，見到。

24 Q. Ms Cho explained first why certain entries were marked  
25 in red. She says:

1           "The system identifies time entries in red for  
2           persons who spent ten hours or more on site, but arrive  
3           later (ie after 8 am) or departed earlier (ie before  
4           6 pm) than the normal working hours."

5           That was Ms Cho's explanation; do you agree or  
6           disagree?

7           A. 我唔同意，你睇一睇潘焯鴻先生第30號嗰一日，嗰個08:12係冇紅色嘅。

8           Q. Ms Cho's evidence or explanation is that entries which  
9           are marked in red would be for those who spent ten hours  
10          or more on site.

11          On 30 September, Mr Poon arrived at 8:12 and left at  
12          6 pm. That falls short of ten hours.

13          A. 咁嗰呢個16號呢，佢8點48分入閘，16點46分出閘就應該係咪唔夠十個鐘？

14          Q. That's two minutes short of ten hours.

15          A. 咁少過十--唔夠十個鐘就--okay。

16          Q. Mr Ngai, Ms Cho was explaining how the system worked in  
17          colouring the entries. My only question is do you have  
18          any basis to suggest Ms Cho's explanation was  
19          inaccurate; "yes" or "no"?

20          A. 我要搵一搵，因為我都係啱啱睇到嗰個曹女士嘅第二份個證人陳述書，所以  
21          我都要睇一睇。

22          Q. But as to how the system works, namely, as explained by  
23          Ms Cho, ten hours or more and the different arriving  
24          times would show a red entry, this mechanism, is there  
25          anything you can suggest to rebut or disagree with

1 Ms Cho's explanation?

2 A. 因為之前我計糧都有研究過呢個紅色嘅問題嘅，即係點解有啲位置係有啲紅  
3 色，有啲冇，我記得係有啲係例子，所以我就唔係咁同意佢咁樣講法，但係  
4 你就要畀時間我去睇，find out番，即係一直計糧嗰啲period，咁耐以  
5 嚟，我自己嘅經驗。

6 Q. In any event, you have no idea how Leighton's computer  
7 system worked, correct, insofar as these records are  
8 concerned?

9 A. 可以咁講。

10 Q. Now, on the number of work days, again Ms Cho explained,  
11 for a person spending over ten hours on site, the system  
12 will classify it as one work day; five to ten hours will  
13 be classified as half work day; and under five days is  
14 classified as absent.

15 Do you have any evidence or basis to suggest  
16 Ms Cho's explanation is incorrect?

17 A. 呢個佢嘅計法唔清楚，因為我不嬲都唔會去留意佢嗰個working day，我哋  
18 計糧係將佢每一日返咗工嘅時間入落我哋自己個表度，所以我不嬲都有留意佢  
19 個working day嗰啲嘢嘅情況。

20 Q. Your witness statement queried this document recording  
21 Mr Poon's number of work days as 9.5, as we could see  
22 from the entry towards the right-most -- the fourth  
23 column.

24 You say it can't be nine and a half days because you  
25 yourself counted 15 and a half.

1 Ms Cho explained why Mr Poon's site attendance  
2 record for September correctly showed nine and a half  
3 work days. Do you have any basis or evidence to suggest  
4 that she was wrong?

5 A. 如果用番我哋中科嘅計法，就唔正確喇。

6 Q. How would China Technology compute the work days of  
7 Mr Poon?

8 A. 潘先生工作日，因為佢係老闆嚟嘅，我哋真係唔需要計，係呀，但係我哋如果  
9 正常一個工人，我哋會照跟番掌紋真係入番落去佢每一日返咗幾多個時間，我  
10 哋咁樣計番出嚟，但係我哋就唔係話咩嘢五至十個鐘半日，唔係，我哋照番佢  
11 返咗幾多鐘就幾多時間咁樣。

12 Q. So Ms Cho explains this is how Leighton's system worked.  
13 Do you have any evidence or basis to say she was wrong?

14 A. 我有依據，但係我唔明點解冇--返唔足五個鐘就會缺席，呢啲就如果同工人--  
15 任何工人講，都應該係有問題，即係返三個鐘，咪照畀番三個鐘嘅人工，呢個  
16 係我哋自己計法。

17 Q. China Technology has received monthly records like this  
18 from Leighton; correct?

19 A. 係。

20 Q. Including this one which we are looking at?

21 A. 應該唔係18年，我嗰個好似係15年收，因為每個月係睇番個email，收完，  
22 print番出嚟嘅。

23 Q. The copy which China Technology received for the month  
24 of September 2015, insofar as Mr Poon is concerned, is

1 identical to this document; correct?

2 A. 要畀番我嗰份我睇一睇，再confirm番。

3 Q. D2/1136. Can you see the code 5097?

4 A. 見到。

5 Q. That's for Mr Poon, and the number of work days, nine  
6 and a half; can you see that?

7 A. 見到。

8 Q. Upon receiving this from Leighton, did China Technology  
9 ask Leighton why did it record Mr Poon's attendance as  
10 nine and a half work days?

11 A. 冇，因為我哋真係唔會去留意個working day嘅，我哋自己計糧，而潘生亦  
12 都唔需要計糧，所以我哋冇去特別去為潘生問任何嘢。而但係我發現如果呢  
13 個係全個月份嘅話，我16年係得十一頁，每個都係十格嘅，但係我唔知點解  
14 18年嗰一個，即係禮頓新嗰個就有十二頁嘅total，我唔知中間會唔會仲有  
15 其他嘢錯，所以我就喺口供有講過，有陣時就係呢啲錯誤。

16 Q. I am focusing on the entry for Mr Poon for September  
17 2015. Is it correct that despite this record which you  
18 received from Leighton, China Technology also did not  
19 seek to correct any entries for Mr Poon with Leighton  
20 for this month?

21 A. 冇嘅，因為我老闆返工有時揸車，車出車入，我哋係都知道有陣時啲掌紋係  
22 唔準確嘅，所以亦都好難去同禮頓講番，係呀，即係你見到29號佢朝早亦都  
23 係冇入嘅。你見到我嗰一份有個5740有個工人又係12點07分，唔知點解有  
24 個咁嘅record，即係如果冇話特別去再咩嘢嘅，我哋就希望base on呢個，

1 再加番我哋自己出糧，最主要係一個reference for出糧嘅嘢。

2 Q. Are you suggesting, between the 20th -- in fact between  
3 19 September all the way to 28 September, these dates  
4 where we can see no entry for Mr Poon, he drove to work  
5 every day, and therefore the system did not capture his  
6 attendance? Is that your evidence?

7 A. 潘先生返地盤一般都係揸車，但係喺呢個月--呢個period入面，我就唔清楚。

8 Q. Well, if Mr Poon usually drives to site, as you say, can  
9 you explain why we still see entries for the period of  
10 1 September all the way to 18 September on this  
11 document?

12 A. 我唔係潘先生，我解釋唔到。

13 Q. Now, seeing that there is a block of what you call  
14 missing entries or non-entries for 19 to 28 September,  
15 China Technology or Mr Poon took no steps to verify or  
16 correct this with Leighton; correct?

17 A. 首先再搞清楚，因為佢係一個老闆級嘅員工嚟㗎嘛，所以佢唔需要去同禮頓  
18 核實任何嘢，我計糧亦都唔會計潘先生個人工，所以我都唔會去同禮頓核實。

19 Q. Leaving aside whether it's necessary for him to do so,  
20 I just want an answer as to whether factually Mr Poon or  
21 China Technology ever verified or queried with Leighton  
22 these entries from 19 to 28 September 2015, as we can  
23 see from this document.

24 A. 你係指潘生㗎，定全部工人㗎，定係邊位呀？

25 Q. For Mr Poon.



1 A. 冇，因為我再講，係唔需要。

2 即係如果一個人唔使計佢糧，咁我有理由特登又去做呢啲咁嘅嘢。

3 Q. Did China Technology ever tell Leighton there is no need  
4 to provide the site attendance record of Mr Poon at all?

5 A. 冇。

6 MR CHANG: Thank you, Mr Chairman. Thank you.

7 COMMISSIONER HANSFORD: Can I ask a question at this point,  
8 Mr Ngai. This is really just for my interest. Did you  
9 pay your workers by the hour or by the day?

10 A. 按日計，就會除番十個鐘幾錢，咁去計番佢每個月，如果每日返咗三個鐘，  
11 咁就畀番0.3工佢。

12 COMMISSIONER HANSFORD: Right. So are you telling me that  
13 you added up all of their hours during a week and then  
14 divided that by ten, and then paid them that number of  
15 days? Is that the way you did it?

16 A. 唔係，每日計，每一日計，按每一日計，例如個工人佢朝返咗8點，收12點，  
17 走咗，嗰一日，我嗰一日就會畀0.4工佢。

18 COMMISSIONER HANSFORD: I see. So on every day he works,  
19 you determined the hours that he worked and then divided  
20 that by ten -- and then for each hour he worked, that  
21 would be a tenth of a day's wage; is that correct?

22 A. 係，大致上係咁。

23 COMMISSIONER HANSFORD: Thank you.

24 MS CHONG: No questions from Fang Sheung.

25 MR KHAW: No questions from the government.

1 MR BOULDING: No questions from MTR, sir.

2 Re-examination by MR TO

3 MR TO: I just have two questions to re-examine, if that's  
4 okay.

5 Mr Ngai, just two questions.

6 A. 係。

7 Q. These touch on the questions that were raised before.

8 The first question: how many times has Leighton  
9 approached you about the sign-in/sign-out records in  
10 terms of whether they were accurate?

11 A. 應該印象中，冇接觸過。

12 Q. My second question is: according to Ms Emily Cho in her  
13 second witness statement, in her report it says five  
14 hours is classified as absent?

15 A. 係，見到。

16 Q. What will happen if you don't pay your workers according  
17 to the Leightons in and out report?

18 A. 啲工人會當欠薪，上勞工處追討番我哋，到最後都係會basic番，按番禮頓，  
19 而勞工處亦都係佢四個鐘，就畀番四個鐘嘅人工佢，要畀番足嘅。

20 MR TO: I don't have any further questions.

21 Chairman, Commissioner, that's me finished.

22 CHAIRMAN: Thank you.

23 WITNESS: Thank you.

24 COMMISSIONER HANSFORD: I'm still struggling actually on

25 Mr To's last question and the answer that went with it.

1 The question you were asked, and I've got it on the  
2 screen:

3 "What will happen if you don't pay your workers  
4 according to the Leightons in and out report?"

5 And your answer was:

6 "They will deem it as wages in arrears."

7 Who will deem it as wages in arrears?

8 A. 啲工人會上去勞工處，佢發覺啲人工唔啱，會上勞工處追討，勞工處就會  
9 搵第一方就係我哋，亦都會搵大判去提供番呢一個嘅掌紋紀錄。勞工處會  
10 按番個掌紋紀錄去計清楚究竟我哋有冇出糧少咗畀工人。

11 COMMISSIONER HANSFORD: Okay. Now I think I understand.

12 What you are saying is if you had followed Leighton's  
13 system of five hours or less being absent, if you had  
14 followed that, and on that basis not paid your workers,  
15 then they would go to the Labour Department; is that  
16 your answer?

17 A. 完全正確。

18 COMMISSIONER HANSFORD: Now I understand. Thank you.

19 MR TO: Thank you, Professor.

20 CHAIRMAN: Good. Thank you very much indeed. Your evidence  
21 is now completed. Thank you for your assistance.

22 WITNESS: Thank you, Chairman.

23 (The witness was released)

24 MR PENNICOTT: Sir, the next witness is Mr Zervaas.

25 CHAIRMAN: Yes.

1 MR PENNICOTT: Before we call him in, can I just mention one  
2 matter? Sir, not necessarily with Mr Zervaas, but  
3 I don't rule it out entirely, but certainly with  
4 a number of the forthcoming Leighton witnesses, we will  
5 inevitably be going back to the topic of NCRs, and in  
6 particular, I suspect, NCR157, with which we are  
7 of course very familiar.

8 So I thought this might be an opportune moment, just  
9 in case you and Prof Hansford haven't looked at it yet,  
10 to show you two documents which might help with some of  
11 the background. I do that because -- I do it now and  
12 I haven't done it before because yesterday, I think last  
13 evening, we were helpfully given a document by Leighton,  
14 and that is the guideline 121 that I had been asking  
15 about previously.

16 Before we go there, however, could I ask you,  
17 please, to be shown a document at B3/1615. Bundle B3,  
18 page 1615. Sir, I'll have to read this off the screen  
19 because I don't have a hard copy.

20 Sir, this is part of the MTR's project integrated  
21 management system, also known as PIMS. It is headed,  
22 "Guidelines for raising contract-level works NCR", and  
23 clause 1 or paragraph 1 of this document defines  
24 an NCR -- this is the MTR definition:

25 "A Works NCR is to report a non-conforming product  
26 which does not fulfil the specified requirements of

1 a contract. The non-conforming product shall be dealt  
2 with before proceeding to the next stage of work or  
3 before covering up. A Works NCR is raised where the  
4 non-conforming product is significant and that  
5 corrective and preventive actions are required to  
6 prevent recurrence of similar nature."

7 So one gets assistance from that definition as to  
8 the circumstances in which the MTR at least think an NCR  
9 should be issued. That is something that is  
10 significant, and the corrective and preventive actions  
11 are required.

12 Paragraph 2 gives examples: pile out of specified  
13 tolerance; major concrete defects, honeycomb defects and  
14 so forth; missing rebars in structures per design  
15 requirements; non-approved material incorporated in the  
16 work.

17 Then paragraph 3 gives examples of where Works NCRs  
18 should not be raised, and a list is given -- I don't  
19 read them out -- then if we could scroll down please,  
20 "Points to note when raising Works NCR":

21 "The contract management team should encourage  
22 contractors raising their own Works NCR in accordance  
23 with their own QA/QC procedure. This is a more  
24 efficient way than the contract manager raising the NCR  
25 to the contractors. CM team shall obtain a copy of the  
26 contractor's NCR to maintain oversight".

1           Of course we know that NCR157 was indeed passed by  
2           the MTR to Leighton. We saw that when we were speaking  
3           to Mr Plummer.

4           That's the MTR position, as it were. I haven't read  
5           it all out.

6           COMMISSIONER HANSFORD: Mr Pennicott, before we move on, can  
7           I understand, this is NCR guidelines to MTR staff, as  
8           opposed to NCR guidelines to MTR's contractors?

9           MR PENNICOTT: That's my understanding, sir, yes: the people  
10          at MTR who may be responsible for the issuing of NCRs.

11          COMMISSIONER HANSFORD: Fine. Thank you.

12          MR PENNICOTT: And, sir, could I then take you to the  
13          document that we were given yesterday. I'm afraid --  
14          I know it's in C35, I know that's item 159, but I'm  
15          afraid I don't have the page number. But it seems to be  
16          on the screen. Thank you very much.

17          So, sir, I understand this to be guideline 121, and  
18          I'm sure it says that somewhere but I can't immediately  
19          see it. This, as I say, was received yesterday. It's  
20          called "Non-conformance report classification".

21          "Purpose

22          To describe the method of classifying defective work  
23          non-conformances.

24          Classification methods

25          Three methods are used to classify the  
26          non-conformance report, those methods are described

1 below.

2 1. Party responsible for causing defect" -- I don't  
3 read it all out. Then:

4 "2. Causes of defective work".

5 If you could scroll down, please, a matrix is given  
6 there, and again I don't propose to read it all out at  
7 this stage.

8 If you could scroll down again, please.

9 Then we have the non-conformance report  
10 classification, and the main causes are listed there:  
11 survey, documentation, workmanship, material handling,  
12 manufacture, identification, design and other. Then  
13 subsidiary causes: personnel, material, plant and  
14 equipment, and so forth.

15 You will recall that on NCR157, the primary cause,  
16 whatever it is defined as -- sorry, go up again  
17 please -- the main cause was described as workmanship  
18 and the subsidiary cause I think was personnel.

19 So this is, as it were, the Leightons  
20 classification. What it doesn't do, it seems to me --  
21 and I don't know if there is anything else Leightons  
22 have -- it doesn't, as per the MTR document that we  
23 looked at, doesn't define the circumstances in which  
24 an NCR might be issued, ie something that's significant  
25 or something that's preventive, and so forth. It really  
26 is just a description of how one fills in the form and

1           how one classifies the different causes, and so forth.

2           Sir, I am helpfully told that the bottom right of  
3           this bottom is EDL121.

4   COMMISSIONER HANSFORD: Okay. Obviously I can look at it  
5           myself, but in NCR157 you tell us the subsidiary cause  
6           was noted as personnel.

7   MR PENNICOTT: I'm just doing it from recollection.

8   COMMISSIONER HANSFORD: Not methodology?

9   MR PENNICOTT: No, sir.

10   COMMISSIONER HANSFORD: I suppose it could have been either.

11   MR PENNICOTT: Yes.

12   COMMISSIONER HANSFORD: Okay.

13   MR PENNICOTT: If we can scroll down a little bit, please --  
14           yes, if we could pause there -- sir, if you look at the  
15           penultimate example there -- it's quite interesting that  
16           you raised the point:

17           It says:

18           "Congested reinforcing bars" -- so this is the  
19           defective work description example -- "in a column  
20           prevented proper vibration of concrete during placing.  
21           Later, when removing the formwork, honeycombed concrete  
22           was found at a number of locations."

23           Main cause, workmanship; subsidiary cause,  
24           methodology.

25           In that case, one can see perhaps the difference  
26           between a congested reinforcing bar and its consequence,





1           Mr Zervaas, can you give your full name to the  
2           tribunal, please.

3           WITNESS: Anthony Peter Zervaas.

4                         MR ANTHONY PETER ZERVAAS (sworn)

5                         Examination-in-chief by MR WILKEN

6           MR WILKEN: You have given four statements to this Inquiry.

7           Can I take you to them in turn, please. The first is at  
8           C12/7673. Do you see there the first page of your first  
9           witness statement?

10          A. Correct.

11          Q. Then if you go to 7680, is that your signature?

12          A. Yes.

13          Q. And it's dated 13 September 2018?

14          A. Mm-hmm.

15          Q. Can you go now, please, to C32/24656. Is that the first  
16          page of your second witness statement?

17          A. Yes.

18          Q. If you go to 24660, is that your signature?

19          A. Yes.

20          Q. And it's dated 15 October 2018?

21          A. Correct.

22          Q. If you can then be taken, please, to C34/26496, is that  
23          the first page of your third witness statement?

24          A. Yes.

25          Q. Then if you can go to 26504, is that your signature?

26          A. Correct.

1 Q. Is that dated 29 October 2018?

2 A. Yes.

3 Q. Can you please be taken to C35/26574. Is that the first  
4 page of your fourth witness statement?

5 A. Yes.

6 Q. Then if you go, please, to 26576, is that your  
7 signature?

8 A. Yes.

9 Q. Is that dated 5 November 2018?

10 A. Yes.

11 Q. That's the evidence which you wish to advance to this  
12 Commission?

13 A. Yes.

14 Q. Is it true and correct, as far as you are concerned?

15 A. Correct, yes.

16 Q. Is there anything you want to add or alter to it?

17 A. No.

18 MR WILKEN: Mr Zervaas, if you wait there, please, various  
19 counsel and members of the Commission will ask you some  
20 questions, starting with the man to my left,  
21 Mr Pennicott.

22 WITNESS: Okay.

23 Examination by MR PENNICOTT

24 MR PENNICOTT: Good afternoon, Mr Zervaas. As Mr Wilken has  
25 indicated, I'm one of the counsel to the Commission, and  
26 I get to ask you some questions first.

1 A. Yes.

2 Q. Others will follow. As Mr Wilken rightly says, if the  
3 Chairman or Commissioner wish at any stage to ask you  
4 questions, they will, and when we get to the end of that  
5 process, if Mr Wilken feels it necessary or appropriate  
6 to ask you any further questions, then he gets  
7 an opportunity to do so.

8 A. Okay.

9 Q. Now, Mr Zervaas, you I think became project director on  
10 behalf of Leighton in October 2016; is that right?

11 A. Yes, correct.

12 Q. And you took over from Mr Plummer?

13 A. Correct.

14 Q. Was there a short sort of handover period between the  
15 two of you?

16 A. Yes. It was four days, from memory.

17 Q. Four days?

18 A. Yeah.

19 Q. Can I ask you, when that sort of handover takes place,  
20 when you replace somebody at that sort of level of  
21 project director, what steps did you take to familiarise  
22 yourself with the project and understand where it had  
23 reached and what issues may have arisen, and so forth?  
24 How did you go about that?

25 A. I had a -- Malcolm gave me a download on the world as he  
26 saw it. I also reported to an operations manager at the

1 time and he also gave me a download on how he saw the  
2 status of the project. Then I spoke to some of the key  
3 staff on the project at the time, just to, you know, get  
4 people's views and then form my own view.

5 Q. Right. Where had you come from?

6 A. I had been working the previous three and a half/four  
7 years in Macau. I was working on a casino project in  
8 Macau.

9 Q. Right. So, when you joined the project in October 2016,  
10 this was your first ever involvement with the project;  
11 you had no prior involvement with it?

12 A. Never, ever.

13 Q. All right.

14 Could I ask you, please, to be shown an email which  
15 is at C12/7922.

16 Can we go to the next page -- thank you very much.

17 This is the email of 6 January 2017 that was sent to  
18 you by Mr Poon and also sent to Joe Tam?

19 A. Correct.

20 Q. Could we then go to 7939. This is the follow-up email  
21 that Mr Poon sent on 7 January 2017. He says:

22 "Dear Anthony,

23 We had investigated internally and it is quite clear  
24 that your site in-charge Khyle Roger was well aware and  
25 directing these activities."

26 Do you see that?

1 A. Yes, I see that.

2 Q. Mr Rodgers told us the other day that he had never seen  
3 that email. Is he right?

4 A. Yes. I don't recall talking to him about it or issuing  
5 that email to him.

6 Q. You've anticipated my next question. He didn't see the  
7 email.

8 A. No.

9 Q. And he also told us that you didn't speak to him about  
10 it, and it sounds as though you agree with that?

11 A. Yes.

12 Q. Why did you feel it, if you did -- let me ask the direct  
13 question: why didn't you speak to him about it?

14 A. I had the previous day contacted my superior, which was  
15 Paul Freeman at the time, and we decided that it was  
16 best that we get an independent investigation underway  
17 which involved -- which was led by our head of  
18 engineering, Mr Stephen Lumb. So I wanted that  
19 investigation to be independent and I didn't want to  
20 influence the investigation by talking to anyone about  
21 it.

22 Secondly, at the time that email was sent, it was  
23 clear that Mr Poon was trying to apply commercial  
24 pressure during a commercial dispute. That's how I felt  
25 at the time. Okay?

26 Q. It just seems slightly curious, Mr Zervaas, that whether

1 he's right or whether he's wrong, Mr Poon has named  
2 a particular individual in an email, so he's pinpointed  
3 somebody, if you like, involved in the sort of  
4 malpractices he was talking about at the time, and you  
5 didn't think it appropriate to speak to him. I just  
6 point it curious, Mr Zervaas.

7 A. As I said, I felt it necessary to make sure the  
8 investigation was independent, and I left that up to  
9 Stephen Lumb and his team.

10 Q. Because of course the problem that arose -- I say  
11 "problem" -- one of the consequences of you not speaking  
12 to Mr Rodgers, it also appears that Mr Lumb never spoke  
13 to Mr Rodgers either, so something rather got lost in  
14 the investigation, that is the one person that was named  
15 was never spoken to. Again, don't you find that rather  
16 odd?

17 A. No, not at the time, no. That was the decision -- that  
18 was the decision I made, and the day before I'd asked  
19 for the investigation to take place, and I stayed  
20 removed from the investigation.

21 CHAIRMAN: Did you give to whoever was doing the  
22 investigation -- you've given his name already -- or one  
23 of his assistants a copy of this email so that they  
24 could speak to the person?

25 A. I don't recall giving that email to Mr Lumb. I don't  
26 know who I gave it to, if anybody.

1 MR PENNICOTT: That's a point I was going to take up with  
2 you, Mr Zervaas. Could you please look at paragraph 13  
3 of your witness statement. That's 7675. That's your  
4 first witness statement.

5 A. Yes.

6 Q. You say:

7 "Given the serious allegations made by Poon,  
8 I immediately forwarded that email to Michael Fu of  
9 MTRCL ..."

10 Now, let's pause there for the moment. That  
11 email -- now, I've shown you two; there's 6 January and  
12 7 January -- which email are you referring to?

13 A. 6 January.

14 Q. Okay. Then you go on:

15 "... copying my superiors at the time, Paul Freeman  
16 (operations manager ...) and Stephen Lumb (head of  
17 engineering) ... Leighton mobilised Stephen Lumb and his  
18 team to come to site with the team to conduct  
19 an investigation."

20 So you say that you gave Mr Lumb, amongst others,  
21 the first email, if you like --

22 A. Yes.

23 Q. -- the 6 January, but you didn't give him the 7 January;  
24 is that the position?

25 A. I don't recall sending anyone -- sending anyone that  
26 email on the 7th. I don't recall having done that.



1 Q. Okay. Perhaps we could just have a look at what Mr Lumb  
2 says about that. We will need to find his first witness  
3 statement, at C20112, C27/20112.

4 What he says is this, at paragraph 15 -- this is  
5 Mr Lumb speaking, Mr Zervaas:

6 "I was told that there had been an allegation made  
7 in an email (I do not recall if I was specifically told  
8 that it came from Jason Poon), which attached various  
9 photographs."

10 Now, it was the second email, 7 January, that  
11 attached the photographs; yes?

12 A. I'd need to check that.

13 Q. Okay. Assume I'm right.

14 A. Okay.

15 Q. "I was shown the photographs [says Mr Lumb] (but not the  
16 email). I cannot now recall exactly what was shown in  
17 the photographs, but I do recall that they showed the  
18 cut end of a threaded reinforcement bar."

19 Do you see? Obviously I'll get the opportunity of  
20 asking Mr Lumb --

21 A. Yes.

22 Q. -- at some point what it was he had in his possession.  
23 But so far as you're concerned, as I understand it, you  
24 sent him the email of the 6th, you have no recollection  
25 of sending him the email of the 7th, but if I'm right  
26 about the photographs, somebody gave him the photographs

1 attached to the 7 January email?

2 A. Yes. I don't -- I'm not clear on the 7th email; okay?

3 Q. All right. We'll come back to Mr Lumb's report, or  
4 review report, a little later on, but I just wanted to  
5 try to clear the decks on those emails to start with,  
6 but we will come back to Mr Lumb's report later.

7 Could I then switch to September 2017 --

8 A. Mm-hmm.

9 Q. -- and the meetings that you had with Mr Poon to settle  
10 the final account.

11 A. Yes.

12 Q. And also enter into the confidentiality agreement.

13 A. Mm-hmm.

14 Q. My understanding is that you had a meeting on  
15 16 September 2017 with Mr Poon.

16 A. The 15th.

17 Q. Sorry, 15 September --

18 A. Friday, the 15th.

19 Q. Friday, 15 September 2015.

20 A. Yes.

21 Q. In the late afternoon?

22 A. Correct.

23 Q. And you reached an agreement with him, and the further  
24 final account sum was 1.6 million?

25 A. Yes.

26 Q. And Mr Speed told us yesterday that prior to you having

1           that meeting with Mr Poon, you and Mr Speed discussed  
2           the parameters of the deal that you hoped to reach with  
3           Mr Poon?

4       A.   That is correct.

5       Q.   Could I ask you this: at what point in the discussions  
6           with Mr Poon did the confidentiality agreement arise; at  
7           what stage?

8       A.   It was -- to my recollection, we spoke about finishing  
9           up on the project; okay? In the previous days and  
10          weeks, we had been sending letters about poor  
11          performance, and I agreed with Mr Poon that, you know,  
12          it wasn't working out and we were determined to maintain  
13          the relationship because of the Liantang project up on  
14          the border. We agreed the parameters of the final  
15          account and the 1.6 million. To maintain -- the  
16          discussion around maintaining the relationship, it was  
17          all, "Mr Poon, how can we be assured you're not going to  
18          continue making false allegations every time there's  
19          a commercial dispute?" Okay? That's when it was put to  
20          him to sign a confidentiality agreement.

21      Q.   Right. So did you put that to him before Mr Speed  
22          turned up at the meeting?

23      A.   Correct, yes.

24      Q.   Had you discussed that move, as it were, with Mr Speed  
25          beforehand?

26      A.   Yes, that's correct. Yes.

1 Q. You probably may have heard or read the evidence that  
2 Mr Speed gave yesterday as to the reasons for entering  
3 into or asking Mr Poon to enter into that  
4 confidentiality agreement. Have you read that?

5 A. Yes, I read the transcript this morning.

6 Q. You read the transcript. Let's just remind ourselves of  
7 what he said. So that's the transcript for Day 16.  
8 It's at page 110 of yesterday. The question at  
9 line 3 -- have you got it there?

10 A. Yes.

11 Q. -- that I asked was:

12 "In the last three to five years, Mr Speed, how many  
13 confidentiality agreements has Leighton entered into,  
14 approximately, with their sub-contractors?"

15 Pausing there, before we look at the answer --  
16 I didn't actually get an answer to that question, so I'm  
17 going to ask you. Can you recall how many  
18 confidentiality agreements Leighton has entered into,  
19 approximately, in the last three to five years?

20 A. I can't speak on behalf of Leighton but as far as agreed  
21 final accounts, this was my first one.

22 Q. Your first one?

23 A. Yes.

24 Q. Okay. So in the three and a half years in Macau on  
25 a Leightons project, no confidentiality agreements  
26 entered into?

1 A. Not closing.

2 Q. Okay.

3 A. But I hadn't had someone making false allegations  
4 either.

5 Q. So if this was your first one -- I mean, were you aware  
6 of the concept, the idea of a confidentiality agreement,  
7 before this one?

8 A. We'd used -- I know of confidentiality agreements being  
9 used when we're tendering, when we are asking people to  
10 provide ideas and initiatives and, you know, give us  
11 ideas for winning edges and that they remain  
12 confidential. I know consultants -- we've had  
13 consultants from time to time signing confidentiality  
14 agreements.

15 Q. Yes.

16 A. And there could have been specialist sub-contractors  
17 also that signed confidentiality agreements.

18 So, I mean -- yeah, as far as I know, this was  
19 a standard confidentiality agreement.

20 Q. Right. But the first one that you had direct personal  
21 experience of?

22 A. Yes.

23 Q. Okay.

24 CHAIRMAN: Sorry, could I go back just a tiny bit. You said  
25 a little bit earlier that you said to Jason Poon words  
26 to the effect, "How can we be assured that you won't

1 keep making false allegations?" Do you recall putting  
2 it to him that directly?

3 A. Yes. Yes.

4 CHAIRMAN: What was his reaction?

5 A. He just smirked at me. Look, I -- it's not really clear  
6 but he smirked at me and then, you know, I said,  
7 "Perhaps we can sign a confidentiality agreement", and  
8 he agreed to that. I don't think there was any debate  
9 about it.

10 CHAIRMAN: He didn't sort of say anything along the lines  
11 of, you know, "They are not false at all", or anything  
12 like that?

13 A. No. There was no resistance -- sorry, sir, what was  
14 your question again?

15 CHAIRMAN: I wanted to know if you had been quite direct in  
16 saying to him, "Look, we need to be sure that you won't  
17 continue making false allegations", and you've said to  
18 the best of your memory you did put it pretty bluntly to  
19 him, almost in words of that kind if not those words.

20 A. Yes, I was frustrated because the email of 6 January was  
21 when there was a commercial dispute, and he had removed  
22 his labour from the project at the time; okay? So the  
23 timing of the 6 January email was around a commercial  
24 dispute. Then that email that he had sent to the  
25 Secretary of Transport on Friday, 15 September was at  
26 the time of a request for payment which was leading to

1 the commercial dispute because the site team at the time  
2 had sent him notices about poor progress and was  
3 referring to, "You need to improve your progress or we  
4 may need to terminate your contract", words to that  
5 effect.

6 So we had reached a serious point and, you know, he  
7 had sent that email to the secretary on the Friday, and  
8 on that evening when I met with him, I was direct,  
9 because, you know, there was a trend emerging with  
10 Mr Poon.

11 CHAIRMAN: Okay. And as you say, your memory is that,  
12 depending on how you interpret it, he simply smiled back  
13 at you or, to use the word --

14 A. He said, "Yes, I will sign it". You know, there was  
15 an agreement -- that's my recollection, he said, "Yes,  
16 okay".

17 CHAIRMAN: There wasn't any protestation on his part that  
18 you remember?

19 A. No.

20 MR PENNICOTT: Did you have the confidentiality agreement  
21 there in your hands, ready to give him, on the 15th?

22 A. No, I did not. I recall it was drafted the following  
23 Monday. The final account statement and the  
24 confidentiality agreement were drafted on the Monday,  
25 the 18th.

26 Q. So you had only talked about the prospect --

1 A. Correct.

2 Q. -- of entering into a confidentiality agreement in  
3 principle on the 15th; you hadn't actually seen the  
4 terms on the 15th?

5 A. Yes, correct.

6 CHAIRMAN: At that time -- one final question on this  
7 subject, thank you -- to your knowledge, had Mr Poon  
8 been made aware of the report by Mr Stephen Lumb?

9 A. There was a phone call on the Friday morning. I was in  
10 Macau. I regularly went to Macau every Friday. And he  
11 rang me just before I was going into a meeting and it  
12 was again payment, it was a payment question, and he  
13 said Jon's away -- Jon Kitching was the project director  
14 at the time and he had gone on leave for a long weekend,  
15 and he said, "Am I going to get either -- am I going to  
16 get a cheque today?" I said, "I'm just going into  
17 a client meeting, I'm not aware of the details, what's  
18 outstanding to you, I'll be back in Hong Kong tonight,  
19 let's meet tomorrow." He said, "What about my email in  
20 January?" And I said, "Okay, what about it?", and he  
21 said, "You never responded to me", and I said, "I told  
22 you that I appointed -- sorry, I said I had appointed  
23 an investigator, as in Stephen Lumb, and we had  
24 conducted an internal investigation, we had contacted  
25 MTRC, and there was nothing -- in that review, there was  
26 nothing untoward identified. Then he just said, "Are



1           you going to pay me?" I said, "Look, be reasonable  
2           about this. I'm in Macau, I don't know the details.  
3           Let's meet on site tomorrow. Let's step through this,  
4           Jason", and he hung up on me.

5           And then subsequent to that I went into the client  
6           meeting, I recall when I looked at my phone during  
7           a client meeting, he had sent an email to the Secretary  
8           of Transport requesting a meeting.

9           MR PENNICOTT: And that precipitated you coming back for the  
10          afternoon meeting --

11          A. Well, I came back earlier than I what I'd normally --

12          Q. Just to be clear and just focusing on the chairman's  
13          question, at no time did you give Mr Poon Mr Lumb's  
14          report?

15          A. No.

16          CHAIRMAN: Looking back on it -- and I appreciate hindsight  
17          is perfect wisdom, and none of us have perfect wisdom.

18                 -- but looking back on it now, you had a man who  
19          had, in fairly strong terms, made mention of the fact  
20          that there was perhaps serious corner-cutting in the  
21          question of the steel fixing works. Didn't you think it  
22          would be perhaps a good idea to go back to him and say,  
23          "Look, let's placate the guy, let's show him the report,  
24          it's all been investigated, we've taken his views  
25          seriously, we've looked into the matter; okay? And we  
26          haven't found anything; okay?" So he has been taken

1 seriously, and then you can move from there on a firmer  
2 basis.

3 A. I wasn't prepared to give Jason any more air time on the  
4 allegation that he made.

5 CHAIRMAN: Yes, but looking back now, you don't think  
6 sometimes giving somebody who's frustrated, who is  
7 demanding, who is making allegations that public works  
8 are in danger -- you don't think you shouldn't give him  
9 a bit of air time?

10 A. Not when he's applying -- he's trying to get commercial  
11 gain from raising the issues. That was my view at the  
12 time, he was trying to get commercial gain, achieve  
13 commercial gain.

14 CHAIRMAN: You know, some people, with respect, may say it  
15 tended to show a corporate arrogance. What would be  
16 your comment?

17 A. I disagree strongly.

18 MR PENNICOTT: All right. Just going back to the  
19 confidentiality agreement and Mr Speed's evidence from  
20 yesterday. So we're back at line 6 with Mr Speed's  
21 answer, where he said, in answer to my question:

22 "With our supply chain, we normally use  
23 confidentiality agreements for -- basically, in  
24 tendering, with designers and consultants."

25 That's a point you made earlier, Mr Zervaas.

26 A. Yes.

1 Q. "In these circumstances, we are receiving basically from  
2 Jason Poon and China Technology false allegations and  
3 lies, and we decided in a meeting prior to meeting with  
4 Jason that we would attach the standard form of  
5 confidentiality agreement to the final account."

6 Then if we could go to page 111, please, line 6, the  
7 next point, the next question I raised, was:

8 "There is nothing in the conditions, the terms and  
9 conditions, of the final account statement that require  
10 them [that's China Technology] to enter into the  
11 confidentiality agreement either?

12 Answer: We -- I think, as I said, the false  
13 allegations and lies that were getting made against" --  
14 I think that should be "by" -- "China Technology, that  
15 is a reason why the confidentiality agreement was  
16 included."

17 So, Mr Zervaas, do you agree with what Mr Speed  
18 said?

19 A. In respect to "the false allegations and lies that were  
20 getting made against China Tech, that is a reason why  
21 the confidentiality agreement was being included",  
22 absolutely.

23 Q. So essentially, to put it rather bluntly, you were  
24 contemplating at that stage entering into this  
25 confidentiality agreement to shut him up; is that right?

26 A. Not to make any more false allegations.

1 Q. To shut him up?

2 A. Not to make any more false -- I mean, let's remember,  
3 when he -- at the time of the meeting, he had already  
4 sent an email to the Secretary for Transport; okay? So  
5 the issue about cutting rebar, he had already made  
6 public by way of issuing an email to the Secretary of  
7 Transport. For me, it was making false allegations  
8 about any new issues.

9 Q. You see, Mr Zervaas, in paragraph 27 of your witness  
10 statement, a paragraph which I'm bound to say you repeat  
11 in the second and third witness statements in more or  
12 less similar terms, you say this:

13 "Poon signed a confidentiality agreement as part of  
14 the termination of the sub-contract. Poon was happy to  
15 sign it. This is because Leighton does not want other  
16 sub-contractors to know about the terms of the  
17 termination. Obviously, it is not in the best interest  
18 of Leighton for its sub-contractors to disclose  
19 commercial information with respect to a mutual  
20 termination."

21 So the justification you're giving there, and  
22 repeated in your second and third witness statements, is  
23 that you don't want China Technology or Mr Poon to  
24 disclose commercial information. The justification was  
25 not because he was making false allegations. So why  
26 don't we see anything in here, in your witness

1 statement, about the reason that the confidentiality  
2 agreement was entered into, suggested to him, was  
3 because he was making false allegations?

4 A. Well, they were the facts. We didn't want him making  
5 false allegations.

6 CHAIRMAN: I don't think that actually answers the question.

7 Perhaps, Mr Pennicott --

8 MR PENNICOTT: I will try again, sir.

9 In this statement, Mr Zervaas, and as I've repeated  
10 twice already, in your subsequent statements, you make  
11 the point that you wanted Poon, China Technology, to  
12 enter into this confidentiality agreement so that  
13 commercial information, confidential commercial  
14 information, would not be disclosed to other parties.

15 A. Okay.

16 Q. You are now saying, as I understand it, that the actual  
17 justification for asking him to enter into the  
18 confidentiality agreement was nothing to do with  
19 commercial information, but because he was making false  
20 allegations. Those are two separate things.

21 A. Sorry, I see them linked. He had potential to make  
22 false allegations to obtain commercial gain. That's the  
23 way I saw it.

24 CHAIRMAN: But hadn't you entered into an agreement with him  
25 now? The confidentiality agreement was one leg of that  
26 agreement, but there was also a financial side.

1 A. The financial account, which just wrapped up pay to  
2 date, payment outstanding, which was 1.6. So it was  
3 really a statement of a final account.

4 CHAIRMAN: Then he was going to walk from that?

5 A. Yes.

6 CHAIRMAN: So you had come to an end to your commercial  
7 dealings, essentially? I appreciate these things often  
8 leave stardust in its wake, but essentially you had  
9 reached an agreement, so there wasn't much commercial  
10 gain to be obtained on his part, was there?

11 A. Remember we had the project -- we had another project  
12 with a JV, up at Liantang.

13 CHAIRMAN: All right. So this covered that one as well?

14 A. Whether it did lawfully or not, you know, you need to  
15 check with the lawyers which contracts it covered, but  
16 I'm just letting you know what was clear in my mind;  
17 okay?

18 MR PENNICOTT: But the objective -- what you are now telling  
19 us, Mr Zervaas, the objective in entering into this  
20 confidentiality agreement was not to protect  
21 confidential information. It was to protect you from  
22 false allegations being made again?

23 A. For commercial gain.

24 Q. For commercial gain? All right.

25 Could we just look, in broad terms, Mr Zervaas, at  
26 the chronology of deals that have been reached between

1 Leighton and China Technology from time to time.

2 A. Yes.

3 Q. Firstly, on 12 December 2016 -- so you have been in the  
4 post of project director a couple of months by then --

5 A. Yes.

6 Q. -- following negotiations, you reached an agreement with  
7 China Technology on a revised milestone and final  
8 account payment schedule; yes?

9 A. Correct.

10 Q. And the final account payment sum at that point in time  
11 was \$28 million?

12 A. Correct.

13 Q. And at that point in time, I believe, no malpractice  
14 allegations had been made to you by Mr Poon?

15 A. Correct.

16 Q. So that's first.

17 Secondly -- and it didn't take long for things to go  
18 a bit sour -- as we've seen, there were the emails of  
19 6 and 7 January?

20 A. Yes.

21 Q. Which certainly did allege serious malpractice, as we've  
22 seen?

23 A. Yes.

24 Q. On 23 January 2017, you reached a further agreement on  
25 a revised milestone and final account payment schedule,  
26 which increased the final account payment from

1           \$28 million to \$33 million; is that right?

2           A. Yes.

3           Q. Now, there's only six weeks or so between the first and  
4           second agreement that I've just summarised. Can you  
5           tell me this: what had China Technology done in the  
6           space of just over a month or so to persuade you that  
7           the payment of an extra \$5 million, that is from  
8           28 million to 33 million, was justified?

9           A. Remember around the time of the 6th he had withdrawn his  
10          labour from the project; okay? And I was motivated by  
11          progress; okay? Some of the work he was doing was on  
12          what we call critical path, and if we delayed the  
13          project we could incur penalties, or delaying following  
14          trades, what we call designated contractors of MTRC. We  
15          could incur general damages, possibly, should MTR elect  
16          to do that.

17                 So progress at the time was very critical; okay?  
18          During my negotiations with Poon, he felt as though the  
19          deal that we had done in 12 December, that he had been  
20          short-changed; okay? That he couldn't possibly finish  
21          the works with call it the remaining 28 million, cost to  
22          complete, and he wanted an opportunity renegotiate;  
23          okay? And we gave him that opportunity.

24          Q. All right. And you ended up agreeing to pay him  
25          an extra \$5 million?

26          A. Correct.



1 Q. All right. Then, thirdly, as we have just discussed,  
2 following the meeting on 15 September 2017, you had the  
3 meeting, you agreed the final account, there was  
4 a further \$1.6 million paid, or payable --

5 A. To be paid.

6 Q. -- to be paid. I think it actually was paid pretty  
7 swiftly.

8 A. On the following Monday a cheque was released.

9 Q. Yes, and obviously you had the confidentiality agreement  
10 which we've looked at?

11 A. Yes.

12 Q. Okay. I think you now say, you accept, that both the  
13 final account statement and the confidentiality  
14 agreement were signed on the Monday, on the 18th?

15 A. Correct.

16 Q. Okay. And that was at a meeting between you, Mr Manning  
17 and Mr Poon?

18 A. Correct.

19 Q. Of course, it might be said, as I think you do,  
20 Mr Zervaas, that in raising the alleged threaded rebar  
21 malpractice, Mr Poon was trying to exert commercial  
22 pressure upon Leighton to pay him, China Technology,  
23 more money?

24 A. Mm-hmm.

25 Q. That's your position and your take on the situation, as  
26 I understand it?

1 A. What he was trying to do, yes.

2 Q. The alternative position, Mr Zervaas, might be this. It  
3 might be said that Leighton was willing to pay China  
4 Technology more money on at least two occasions, namely  
5 in January and September, and require him to enter into  
6 a confidentiality agreement to keep him quiet. What  
7 would you say if that was suggested to you?

8 A. The only money, extra money, he was paid was for earned  
9 value or earned work done; okay? So he had to do the  
10 work, he had to earn the work, and to produce  
11 productivity, to be paid; okay?

12 Q. You're sure, are you, that you didn't enter into the  
13 confidentiality agreement on the basis that you paid him  
14 more money to do so?

15 A. Absolutely sure.

16 Q. All right.

17 Could I then return to Mr Lumb. Now, you, as  
18 I understand it -- and we can look at the paragraph in  
19 your statement again in necessary -- you essentially  
20 instigated the review and investigation by Mr Lumb in  
21 January 2017?

22 A. Correct. I received the email. I called -- I sent the  
23 email to my operations manager at the time, we discussed  
24 it and we agreed together that the best thing to do  
25 would be to get our head of engineering in, to attend  
26 site and lead an investigation.

1 Q. All right.

2 A. I'm not sure who contacted Mr Lumb, whether it was -- it  
3 may have been Paul Freeman at the time that spoke to  
4 Stephen Lumb to get him into the project.

5 Q. Mr Lumb produced his first report in late January 2017,  
6 then his final report in February 2017.

7 A. Mm-hmm.

8 Q. Presumably the report would have been submitted to you?

9 A. It was -- he tabled it to me, and he had actually  
10 briefed me on the report.

11 Q. Right. And you would have read the report?

12 A. No, not from top to bottom, no.

13 Q. Can I ask you to have a look at it, the report, that is.

14 A. Yes.

15 Q. It's in C27.

16 If you go, please, to C27/20242.

17 There's a hard copy. It's up to you, hard --

18 A. Where am I going?

19 Q. The front sheet is 20242. That's it there. That's the  
20 front sheet. We can see 10 February 2017 is the final  
21 version.

22 A. Yes.

23 Q. Can I ask you just to look briefly at paragraph 1.2 on  
24 page 20245. The last sentence reads:

25 "The investigation was carried out on site between  
26 9 and 11 January ... and involved an inspection of

1 available site records, and interviews with key members  
2 of the construction team."

3 If you go to 20250, paragraph 5, right at the top,  
4 Mr Lumb says:

5 "Having interviewed various members of the  
6 construction and supervision teams ..."

7 Do you see that?

8 A. Yes, I do.

9 Q. Have you any idea, Mr Zervaas, as to whom he spoke,  
10 interviewed?

11 A. No.

12 Q. Did you just leave it entirely up to him?

13 A. Yes, I did.

14 Q. Okay. At page 20287 -- it's not easy to see on my  
15 copy -- he sets a little chart there, where he says:

16 "The following Leighton staff will have  
17 responsibilities as listed below in respect of the works  
18 covered under this method statement."

19 Do you see that?

20 A. Yes, I do.

21 Q. Then he lists out a number of names that are already  
22 familiar to us and no doubt over the coming days will be  
23 more familiar to us. Indeed, in respect of, on the  
24 left-hand side, Gabriel So, Gary Chow on the right-hand  
25 side, Joe Leung and Edward Mok, to name four.

26 Are you able to say whether these are the people



1 mind.

2 Mr Zervaas, you told Mr Ian Pennicott that you  
3 worked on the project from October 2016 to April 2017.

4 Is that correct?

5 A. No. I said I worked on it from 11 October 2016.

6 I didn't give a finish date, I don't recall giving  
7 a completion date.

8 Q. Sorry about that. But you mentioned, for example, you  
9 had four days of handover; do you remember that?

10 A. On 11 October -- I started on 11 October and I recall  
11 Malcolm finished on 15 October. I think the 11th was  
12 a Tuesday and the 15th was a Friday, and that's when  
13 Malcolm was finishing up.

14 Q. So you familiarised yourself with the details of the  
15 project over four days?

16 A. As much as possible. I think four days -- I wouldn't  
17 have been across all the issues.

18 Q. I understand. Can I take you to the transcript of  
19 Day 16, and it's page 105, line 19. Can you see that,  
20 Mr Zervaas? Can I read it out to you, if you want.

21 A. Yes. Who's the transcript by?

22 Q. The transcript is Mr Khaw asking a question of Mr Karl  
23 Speed. I'll just read a few lines, if that's okay with  
24 you. Line 19, question:

25 "So your corporate position is that nothing, in any  
26 shape or form, by way of load testing, by way of trial

1 investigation, by way of opening up, is necessary? It's  
2 simply we can just all walk away from this; is that your  
3 position?"

4 Mr Speed's answer is:

5 "No, that's not what I said. What I said is that  
6 the works have been constructed in accordance with the  
7 contract."

8 Do you agree with that statement?

9 A. I'm not privy to all of the documents submitted by the  
10 team, so I believe -- I understand Karl was speaking on  
11 behalf of receiving all the witness statements from the  
12 various people within Leightons. I haven't seen those.  
13 I think he was making a statement -- I can't speak on  
14 his behalf.

15 Q. No.

16 A. But I'm not privy to all of the witness statements and  
17 the information, so I think your question is unfair.

18 Q. I understand.

19 Can I take you to a document called H5518.

20 Mr Zervaas, this is an email from WK Wong to Jonathan  
21 Leung, copying Terence Lai, and it's dated 18 May 2015.

22 If you turn over to the next page, H5520.

23 First of all, Mr Zervaas, have you seen this email  
24 before?

25 A. 2015? No. I wasn't on the project.

26 Q. So you were not familiar with, for example, the handover

1 in terms of these details?

2 A. Absolutely not, no.

3 Q. Can I take you to point 1, just for clarity. Point 1 of  
4 it says:

5 "Construction of capping beam/portal frame prior to  
6 MTRCL certify D-wall completion and BD to conduct proof  
7 test incident came to attention of BD team on 27 January  
8 2015."

9 There are some comments there, and the first point,  
10 I'm just going to read that out:

11 "Doubtful in fulfilling BO standard."

12 "BO" means Buildings Ordinance standard.

13 So my question to you, Mr Zervaas is: this is  
14 a serious matter, isn't it?

15 A. I'm not aware of the context of this email, so  
16 I couldn't comment on emails on the project in 2015.

17 Q. Okay. Thank you.

18 Mr Zervaas, my next question relates to Mr Karl  
19 Speed's transcript, on page 107 -- maybe start off with  
20 page 106, line 15. Mr Khaw mentioned this:

21 "They certainly haven't submitted any as-built  
22 drawings to the government."

23 Mr Karl Speed's answer was:

24 "I think they've been prepared."

25 Going over the page to 107. Sorry, it's  
26 Mr Pennicott's question. Mr Pennicott's question on



1 page 107, line 3:

2 "Why has it taken so long to produce these as-built  
3 drawings ...?"

4 Answer: I think they've been produced in accordance  
5 with the contract."

6 And if you look at the very end, line 11 says:

7 "I said I would need to speak with the teams."

8 So did Mr Karl Speed speak to you about this  
9 as-built drawing?

10 A. No, he hasn't spoken to me about as-built drawings.

11 Q. Okay. Can I take you to another document, H39720.

12 MR WILKEN: It's in H20.

13 MR TO: Thank you.

14 MR WILKEN: Item 56\_5.

15 MR TO: Mr Zervaas, have you seen this document?

16 A. No. I don't recall seeing that document. 28 September  
17 2018, that's recent.

18 Q. Have you seen another document called H40052? This is  
19 a document from the government to the MTRC corporation.

20 CHAIRMAN: This is October, just recently.

21 A. No. Recently, I haven't been involved in the day-to-day  
22 of the project, so no, I'm not --

23 MR TO: So you're not aware of these documents?

24 A. I'm not aware of these topics.

25 Q. I understand. Let's move on to another topic, called  
26 gain and pain. I'll share whatever, if you want to look

1 at it, for example --

2 COMMISSIONER HANSFORD: Sorry, before we move on --

3 recently, you haven't been involved in the day-to-day on  
4 the project. Who is doing that role on the project?

5 A. Sorry, Jon Kitching is the project director still on the  
6 project.

7 COMMISSIONER HANSFORD: Okay, thank you.

8 A. Sorry, he's the project director.

9 CHAIRMAN: Right. Okay. Thank you.

10 MR TO: Mr Zervaas, can I take you to the transcript in  
11 terms of Day 16, page 127, line 21. I will just read it  
12 out:

13 "Can you tell us what Mr Plummer actually meant by  
14 'risk and profit sharing' between Leighton and MTRC?  
15 What are the sort of special features --"

16 And Mr Speed's answer was:

17 "Target cost contracts have a gain and pain  
18 mechanism."

19 And if you read down again:

20 "Yes. And ...?"

21 Answer: Well, target cost contracts have a gain and  
22 pain mechanism. If the actual cost is less than the  
23 target cost, you share the gain, and if it's vice versa  
24 you share the pain between you, up to a maximum limit of  
25 10 per cent of the contract value."

26 From your understanding, do you believe in this

1 statement?

2 A. That's Khyle's statement.

3 Q. Yes.

4 A. Yes, that's correct.

5 Q. Can I take you to a document, basically it's D430. This  
6 is the sub-contract for China Technology.

7 A. Mm-hmm.

8 Q. Can you look down. D430.

9 A. Mm-hmm.

10 Q. If you look down there, "Normal working hours" -- can  
11 you see that, Mr Zervaas?

12 A. Yes, I can see, 7.30 to 7.30.

13 Q. Can you see, for example, just in the middle, it says:

14 "... the Sub-Contractor shall be entitled in  
15 a principal of BQ rates plus 18 per cent which shall be  
16 applicable on all measurable work done during that  
17 period of time."

18 Can you see that?

19 A. Yes, I can see that.

20 Q. Now, Mr Zervaas, there was another letter whereby, for  
21 example, there was amendment to this sub-contract. Are  
22 you aware of that?

23 A. Is this to do with delay recovery?

24 Q. Maybe I'll take you to it so you understand that. It's  
25 D531. The letter is dated 25 April 2015. The underline  
26 says, "Deed amendment"; can you see that?

1 A. Yes, I can see that.

2 Q. Can I take you, for example, to the second page of that,  
3 D532.

4 A. Mm-hmm.

5 Q. So you can see that in B, if you look very carefully at  
6 it, basically 18 per cent has been deleted?

7 A. I can't see 18 per cent, yes.

8 Q. If you read the top:

9 "The fifth paragraph under item 5 of the Third  
10 Schedule of the Sub-contract Agreement -- Sub-contractor  
11 Particulars -- subsection 'Sub-contract Scope of  
12 Works' ... commencing 'Normal working hours ...'"

13 If you read it, basically I took you to the page of  
14 D430, there was an 18 per cent, and it has been replaced  
15 by the one at the bottom, "Normal working hours are  
16 7.30 am to 7.30 pm ..."

17 A. Yes. Whether it's the same paragraph -- and I don't  
18 recall the exact paragraph in the sub-contract -- but  
19 I don't see 18 per cent and I don't know if it's the  
20 same context, so --

21 Q. I understand, but what I've done is basically taken you  
22 to the main document, D430, and this D532 is simply  
23 an extract of what is said in D430; okay?

24 Now, can I take you to, for example, D534. This is  
25 the one I want to ask you a question on. 11.8, can you  
26 see that?

1 A. Yes.

2 Q. So what does that imply?

3 A. "In the event that the Engineer does not fully reimburse  
4 the Contractor for any DRM related to overtime, the  
5 Contractor is entitled to recover all uncovered costs  
6 from the Sub-Contractor ..."

7 Q. So, in a way, basically, there's no pain/gain share from  
8 that, is there?

9 A. For the sub-contractor?

10 Q. Yes.

11 A. Not in the context that that's written.

12 Q. Thank you.

13 I'm going to take you to a document called the  
14 confidentiality agreement. I'm sure certain individuals  
15 have mentioned that to you already.

16 A. Yes.

17 Q. Rather than go through the whole confidentiality  
18 agreement, I'm just going to show you a document which  
19 basically is D252.

20 A. Sorry, what was the number again, sorry?

21 Q. D252.

22 A. Okay.

23 Q. Just to put it in context, Mr Zervaas, this was an email  
24 issued by Preston Lee, copied to some of your legal team  
25 from Australia.

26 A. Okay.

1 Q. And it was issued just before or maybe after Mr Jason  
2 Poon went in to see the MTRC on 13 June; okay?

3 If you look at the contents of the email, rather  
4 than go through it, just look at point 3 on page 253.  
5 It says:

6 "The waiver relates only to the technical issue of  
7 the couplers and not to any commercial discussions or  
8 settlement."

9 Previously, you told us the confidentiality  
10 agreement touched on financial matters.

11 A. That was my interpretation of the time. This --  
12 I haven't seen this email before, the Preston Lee email.  
13 I don't know why it was sent or the context it was sent.  
14 You would have to ask the legal team.

15 Q. Okay. Move on. Another one relates to Mr Pennicott's  
16 question about Stephen Lumb's report, and also the  
17 Chairman asked you about this as well. Jason Poon made  
18 the complaint, he gave it to you in January, and you  
19 instigated a process of actually asking Mr Stephen Lumb  
20 to do some investigations; correct?

21 A. Yes.

22 Q. Now, surely, if Mr Poon is making a complaint,  
23 Mr Stephen Lumb would have actually interviewed him.  
24 Why not?

25 A. You will have to ask Mr Lumb that.

26 Q. Okay. Good.

1           One last question I want to ask you is: the as-built  
2           drawings, have they been submitted to the government?

3           A. I'm not aware of the status of the as-built drawings.

4           Q. It is -- basically we are talking about 1,030 days,  
5           two years, ten months so far, and so far we haven't seen  
6           any BA14s being submitted.

7           A. I'm not aware of the status of the BA14 submissions.

8           Q. So, if they haven't been submitted, then chances are  
9           there's a delay?

10          A. I'm not aware of whether there's a delay. I'm sure  
11          they're being compiled in accordance with the contract.

12          Q. According to the contract, the project is supposed to be  
13          completed by now.

14          A. It's still going.

15          Q. It's still ongoing, so who is responsible for the delay?

16          MR WILKEN: Sir, I'm not sure this is either within the  
17          scope of this Inquiry or indeed my learned friend's  
18          Salmon letter. This is fishing.

19          COMMISSIONER HANSFORD: Salmon fishing!

20          CHAIRMAN: Yes. I think the question of the delay of the  
21          as-built drawings is a matter for the Commission in the  
22          sense that we'd like to see them, but internal issues of  
23          is somebody late with a statement or late with putting  
24          the matters forward seems to me to be an inter-lawyer  
25          matter rather than one for a witness who is here to deal  
26          with other issues.

1 MR TO: We understand, Chairman.

2 CHAIRMAN: By inter-lawyer I mean perhaps it's a matter for  
3 Mr Pennicott's team to contact Leightons, et cetera,  
4 et cetera.

5 MR PENNICOTT: I think the objection was rather broader than  
6 that. Mr To seemed to be asking Mr Zervaas who was  
7 responsible for all the delay on the project, which is  
8 completely --

9 CHAIRMAN: Sorry, I thought --

10 MR PENNICOTT: That was my understanding of the question.

11 MR WILKEN: That was my objection, yes, that we're not in  
12 a delay analysis of the project.

13 CHAIRMAN: Oh, sorry. I read it as being --

14 MR PENNICOTT: In the as-built drawings.

15 CHAIRMAN: -- delay in the as-built drawings.

16 MR PENNICOTT: I thought the question had got rather broader  
17 than that.

18 CHAIRMAN: I wasn't expecting that sort of question.

19 MR TO: Sorry, Chairman, it's just as-built drawings haven't  
20 been submitted, so there was a delay.

21 CHAIRMAN: Was your question intended to be limited to  
22 as-built drawings?

23 MR TO: Yes, it was.

24 CHAIRMAN: As I thought it was.

25 MR WILKEN: Fine.

26 CHAIRMAN: Sorry, in which case, it's a matter I think



1 really to be sorted out internally by the team who is  
2 assisting the Commission, and yourself, if necessary,  
3 because they have been promised, they are being  
4 prepared. It's no different from any other piece of  
5 evidence or any other piece of documentary material.

6 MR TO: I understand. Thank you for the clarification,  
7 Mr Chairman.

8 Mr Zervaas, just one more question before we  
9 conclude, if I may. My learned friend on my side just  
10 reminded me about this. Can I show you a document:  
11 D432. Mr Zervaas, can you see the top of it says "C"  
12 means 100 per cent responsibility of contractor, and "S"  
13 means 100 per cent responsibility of sub-contractor; can  
14 you see that?

15 A. Yes, I can see that.

16 MR PENNICOTT: This is back in the sub-contract, Mr Zervaas,  
17 just in case there's any doubt.

18 MR TO: Can you see for example at D433 --

19 A. Yes.

20 Q. -- in terms of mess rooms, sanitary, accommodation,  
21 et cetera, in line 2, you can see in (d),  
22 "cleaning/housekeeping to central points" is the  
23 sub-contractor?

24 A. Sorry, where are you? I lost you. I'm on D433. Which  
25 number?

26 Q. Item 2(d).

1 A. Yes.

2 Q. Can you see that "cleaning/housekeeping to central  
3 points" is the sub-contractor's responsibility?

4 A. Yes, that's what it says.

5 Q. Can I take you to D436.

6 CHAIRMAN: Sorry, I'm not quite sure -- you may have to  
7 assist me there just a little. If this was a criminal  
8 trial or a civil trial, I would be leaving you to run  
9 your own tactical advantage, but as a Commission, where  
10 essentially it's myself and the professor, that seems to  
11 be coming, as the Americans say, from out of left field.

12 MR TO: I understand. I'm trying to show the issue about  
13 honeycombs and who's responsible and who's required to  
14 do it, so I've got a few documents leading up to that.

15 COMMISSIONER HANSFORD: And hopefully, Mr To, you are going  
16 to explain what "cleaning/housekeeping to central  
17 points", how they are related to honeycombing?

18 MR TO: Yes, I will do that.

19 COMMISSIONER HANSFORD: Okay. I look forward to hearing  
20 that.

21 MR TO: In terms of D436, if you look at item 12(b) -- D436,  
22 12(b) -- it says, "Removal and disposal of all excavated  
23 materials", and this is the contractor's responsibility;  
24 yes? If you look at the bottom, (g), it says general  
25 cleaning and final cleaning is the sub-contractor's  
26 responsibility?

1 A. That's what it says.

2 Q. Can I take you to a document called B14253. This is  
3 a document done by Atkins. Have you seen this document  
4 before?

5 A. No.

6 Q. If you look at it, "2nd inspection", it says:

7 "All the defects were repaired at the time of  
8 inspection. The depth of honeycomb is unknown."

9 A. Where are you?

10 Q. In "2nd inspection".

11 A. All right. I'm not aware of this report, so -- I'm not  
12 familiar with it.

13 Q. Can I take you to maybe the last document to show you --  
14 just two more documents and that's the finish.

15 CHAIRMAN: Sorry, it does say here, though, "The depth of  
16 the honeycomb is unknown."

17 MR TO: I understand.

18 I'm going to show him two more documents to conclude  
19 this matter.

20 CHAIRMAN: Thank you.

21 MR TO: The document is basically B5/44.3, and can you go to  
22 C1-0, and can you see the very last one, that document?

23 Mr Zervaas, can you look at the top of this  
24 document, and can you see, for example, are there any  
25 honeycombs?

26 A. It's very difficult to see from this photo.

1 Q. Maybe I will show you another document: C1-3, the last  
2 document, please. How about this document, Mr Zervaas?

3 A. Not clear. No.

4 Q. You can't see it?

5 A. It's not clear to me, no.

6 MR TO: Thank you very much. I don't have any further  
7 questions.

8 COMMISSIONER HANSFORD: Sorry, Mr To, rather than leaving me  
9 guessing until your concluding report -- what's it  
10 called? -- anyway, could you just explain what we've  
11 learned from that little exchange?

12 MR TO: Professor, what I'm trying to put here is two years  
13 before the project -- this was completed two years  
14 before, up to now -- there were no honeycombs  
15 whatsoever, two years before, and to this day basically  
16 there are lots of issues about honeycombs being  
17 mentioned. But if you look at the photographs two years  
18 ago, there was not a single issue about honeycombs.

19 A. I said it wasn't clear.

20 CHAIRMAN: On the photographs -- fools step in and I'm about  
21 to step in -- but isn't there sometimes a fact -- and  
22 I'll put the question to you, Mr Zervaas, thank you --  
23 where honeycombing is not immediately apparent; you have  
24 to do some -- you have to cut away some of the initial  
25 concrete?

26 A. It could be, when you form the slab, and not for me,

1           what's happened here, but it could be if you form a slab  
2           and you pour concrete, you get a slurry coat.

3   CHAIRMAN: That's it.

4   A. And then you strip the formwork, you see a nice straight  
5       surface, but it might be a superficial slurry coat of  
6       2mm to 3mm that could come loose over time which then  
7       may -- you may see something a bit more obvious later.  
8       So it's not obvious on these photos. But these photos  
9       are taken from a distance.

10   CHAIRMAN: Yes. The only reason I raise it is that  
11       perhaps -- the issue of honeycombing is not as simple as  
12       a photograph of what appears to be a clean concrete  
13       wall.

14   A. You're correct.

15   MR TO: Mr Chairman, can I just show the witness,  
16       Mr Zervaas, B14267.

17           This is a layout plan of NSL level, and if you look  
18       at it, for example, there are certain areas whereby  
19       photos were taken relating to the honeycomb.

20   A. So we are on NSL level, looking up at the soffit of EWL,  
21       are we?

22   Q. Yes.

23   A. I don't know.

24   Q. So you don't know about this diagram?

25   A. I haven't seen this report.

26   MR TO: Okay. Maybe I should conclude there.

1 CHAIRMAN: All right. Good. Thank you very much.

2 Cross-examination by MR KHAW

3 MR KHAW: Mr Zervaas, I just would like to discuss with you  
4 regarding your understanding of Mr Stephen Lumb's  
5 investigation; okay?

6 A. Yes.

7 Q. If I can first of all refer you to the witness  
8 statement, your first witness statement, paragraph 11,  
9 where you talk about Mr Jason Poon's complaint about the  
10 alleged malpractice of the cutting of threaded rebars by  
11 Leighton's staff. Do you see that? Then obviously we  
12 know from your evidence that you passed the information  
13 on to your superiors, both Mr Freeman and Mr Lumb, so  
14 that they could carry out investigation, regardless of  
15 the number of emails they would see for the time being;  
16 right?

17 A. Yes.

18 Q. And you also passed the information on to MTR for  
19 reference, for their information; right?

20 A. (Nodded head).

21 Q. Then at paragraph 19 of your report, you talked about  
22 the investigation by Mr Lumb.

23 Now, first of all, can I just ask you: upon  
24 receiving Mr Jason Poon's complaint, ie his email, you  
25 would agree with me that you at least took the view that  
26 his email or his allegation warranted some

1 investigation, from your point of view; is that correct?

2 A. Yes, that's why I passed it on.

3 Q. You simply could not dismiss it immediately?

4 A. It was inconceivable that there could be 30,000 pieces  
5 of rebar cut. That was my personal view; okay? But it  
6 was worthy of sending to my superiors to conduct  
7 an investigation, sure.

8 CHAIRMAN: Sorry to interrupt. The 30,000 pieces came up,  
9 just remind me ...?

10 A. That was in his email, I think, of 6 January. It was  
11 just inconceivable to me.

12 MR KHAW: So am I correct in saying that when you received  
13 his email, on the one hand, you found that it would be  
14 inconceivable for his allegation to be substantiated,  
15 but on the other hand, as a matter of prudence, you  
16 would like to carry out an investigation, to see whether  
17 your view is right or not; is that correct?

18 A. Yes.

19 Q. Thank you. Then if we can go back to paragraph 19 of  
20 your witness statement. You said:

21 "At stated above, Leighton carried out  
22 an investigation on Poon's allegations in his email.  
23 I was not involved in the investigation as I wanted it  
24 to be an independent review ..."

25 Now, I recall that in your evidence today, earlier  
26 on, you also said the same thing to us, ie you wanted

1 the investigation to be an independent one, and here  
2 I believe you repeated the same point.

3 Now, did you ever consider asking any consultants or  
4 advisers, outside of Leighton, to carry out this  
5 investigation in order to make it independent?

6 A. No, I did not. I didn't consider that, no.

7 Q. So you believed that an internal investigation would be  
8 independent enough, if it was done properly?

9 A. Yes.

10 Q. Then at this paragraph, again, you said:

11 "I recall being briefed by Stephen Lumb that  
12 Leighton could not find any evidence to suggest there  
13 was any malpractice as Poon had alleged."

14 Now, pausing here, the main purpose of the  
15 investigation carried out by Mr Lumb was to ascertain  
16 whether there was malpractice as alleged by Mr Poon or  
17 not, right; do you agree?

18 A. Yes.

19 Q. So here you said --

20 A. Sorry, when I say "yes", systematic and widespread, yes.

21 Q. Where it's a large-scale malpractice?

22 A. Yeah, large-scale practice, yes.

23 Q. And here you say you recall being briefed by Mr Lumb.

24 Do you recall how long the briefing took place?

25 A. It was at best five to ten minutes.

26 Q. Five to ten minutes, yes. You told us that you did not



1 have a chance to read his report; right?

2 A. I relied on his briefing, so I didn't read the report  
3 from front to back; okay?

4 Q. Right. Thank you.

5 A. Nobody would.

6 Q. Thank you.

7 Before coming to give evidence today, did you have  
8 a chance to look at his report, look at the contents of  
9 the investigation that he carried out? Did you have  
10 that chance?

11 A. I had another quick look through it, but I didn't read  
12 through it in great deal, no.

13 Q. Can you tell us, in this briefing by Mr Lumb, within  
14 10 or 15 minutes, what did he tell you in a nutshell;  
15 what did he tell you?

16 A. He told me that he had reviewed -- I think most of his  
17 focus was on the records, okay, and making sure that the  
18 records were in place to demonstrate that, you know, we  
19 had the right supervision at the time, okay, and we were  
20 surveilling the -- as the works were being completed,  
21 that we had the right supervision out in the field.

22 He also briefed me that an NCR had been raised,  
23 which I think it was five rebars cut which I know has  
24 been discussed here. So those are the two key  
25 give-aways or heads-up on the report; okay?

26 Q. So supervision and NCR, those are the two main points?

1 A. Yes. Sorry, the main point was there was no evidence to  
2 suggest there was systematic --

3 Q. Of course, yes. And that caused you to come to this  
4 conclusion as stated in your paragraph 19 that Leighton  
5 could not find any evidence to suggest that there was  
6 any malpractice as Poon had alleged?

7 A. Yes. That's what he advised me, yes.

8 Q. Let's take a look at the NCR that he mentioned during  
9 his briefing for the time being. He told you about this  
10 NCR. Did he actually tell you that there was only one  
11 incident of NCR?

12 A. Yes, as I recall. There was one NCR raised and he said  
13 there was -- involved about five bars.

14 Q. One NCR which involved five bars?

15 A. That was my recollection, yes.

16 Q. Thank you. Can you recall whether he actually talked  
17 about cutting of rebars?

18 A. No, I don't recall the specifics. I can't say "yes" or  
19 "no". I'd have to pull the NCR out to confirm. I'm  
20 sure he explained to me what was the content of the NCR.

21 Q. So is it fair for me to say that when he gave you this  
22 briefing, when he talked about the NCR, you did not have  
23 a full picture regarding the extent non-conformity at  
24 that time; would that be right?

25 A. What he did say, as I recall, there was an issue  
26 observed and the issue was rectified immediately, so it

1           was an NCR that had been dealt with immediately,  
2           observations had been dealt with immediately.

3       Q.   So you took the words from Mr Lumb that that was not  
4           a major problem, the NCR; is that right?

5       A.   Correct, I took the word of Mr Lumb, yes.

6       Q.   So you did not have an opportunity to look at any of the  
7           pictures in relation to the NCR either; is that correct?

8       A.   Yes, I didn't. I don't recall looking at the pictures  
9           in the NCR.

10      Q.   If we have a chance now to look at the pictures, we will  
11           see what will be your views on this point.

12      A.   I have seen the photos since. It's not clear to me what  
13           exactly the photos are showing.

14      Q.   Of course. Let's just take a look. C12/8135.

15           If we can take a look at the picture 8136.

16      A.   Yes, got it.

17      Q.   8139. If we can focus on 8139. Just by merely looking  
18           at this photograph --

19      COMMISSIONER HANSFORD: Can we blow it up on the screen?

20      MR KHAW: Yes, of course.

21      COMMISSIONER HANSFORD: Thank you.

22      MR KHAW: We can blow it up and see it clearly.

23           Now, perhaps we can see, obviously, the threaded  
24           rebars not properly installed, and it looks as if the  
25           complete threaded rebars were not even there at the  
26           lower layer of the reinforcement. Do you see that?

1 A. Yes.

2 Q. Now, merely looking at this picture now, as a project  
3 director, would you agree that this was in fact quite  
4 a serious non-conformity?

5 A. It's an issue that needs immediate rectification. It's  
6 obviously -- it depends on the time when the photo was  
7 taken. It was offered up as a hold point and people saw  
8 it, it was -- a hold point had been observed, and it  
9 clearly wasn't installed properly. The team did the  
10 right thing.

11 Q. Now you've got a chance to see this picture, would you  
12 immediately consider, "Hey, how come the workers were  
13 allowed to do this?" Would you consider this?

14 A. I don't think the workers -- given it was an NCR,  
15 I don't think the workers were allowed to do it. It was  
16 observed and stopped. You don't have one supervisor for  
17 every worker.

18 Q. Thank you.

19 A. So it was when we rectified when it was observed.

20 Q. Thank you. And an NCR like this would also lead you to  
21 consider whether supervision or inspection work had been  
22 done properly, otherwise there should not have been such  
23 problem; would you agree?

24 A. No, I think -- as I said, you can't have one supervisor  
25 for every worker, so if the supervisors in the area --  
26 they're not watching every worker and they subsequently

1 see an issue, and raise it and rectify it, they've done  
2 their job.

3 Q. Now, you just told us that according to your knowledge,  
4 the supervisors in that area were not watching every  
5 worker. How did you get that information?

6 A. I just -- it's not practical that you have one  
7 supervisor for one worker.

8 Q. So, at the time when Mr Lumb gave you the briefing, did  
9 you have any idea regarding the extent and frequency of  
10 inspection and supervision which was carried out by  
11 Leighton?

12 A. Not specifically out in the field, no. No.

13 Q. Were you aware of the requirements which were stated  
14 under the QSP?

15 A. At the time, no. I do now know, yes. Well, I know  
16 there's a QSP specifically for couplers, but at the time  
17 I wasn't aware.

18 Q. Right. And obviously, at the time when briefing was  
19 given to you, you were not aware of any of the reasons  
20 or causes as to why this NCR occurred; right?

21 A. Correct.

22 MR KHAW: Mr Chairman, I note the time. I still have  
23 probably more than half an hour.

24 CHAIRMAN: All right. If this is an opportune moment for  
25 you.

26 MR KHAW: Yes.

1 CHAIRMAN: Good.

2 MR PENNICOTT: Sir, can I just raise one point by way of  
3 perhaps putting down a marker, and it's really a marker  
4 being put down for Leighton. It's a matter that I think  
5 probably I take responsibility for. But Mr Lumb is  
6 currently the last of the witnesses for Leighton. That  
7 was a conscious decision taken by the Commission's legal  
8 team, for a number of reasons.

9 I'm beginning to wonder whether that was a very wise  
10 decision. I am beginning to wonder whether perhaps  
11 Mr Lumb ought to come sooner rather than later. I will  
12 give it more thought overnight, but I can see what is  
13 happening at the moment, or may happen over the next few  
14 days. I'm endeavouring to find out who it was that  
15 Mr Lumb spoke to for the purposes of producing his  
16 report, who he interviewed, and my concern is that I'm  
17 going to be asking witness after witness who all say,  
18 "No, he didn't speak to me", "He didn't speak to me",  
19 "He didn't speak to me", and we will get to the end of  
20 the day and Mr Lumb will come along and tell us who he  
21 spoke to and we will have missed, potentially, our  
22 opportunity.

23 I just wonder whether -- I'm going to think about  
24 it, perhaps you, sir, also could give it some thought as  
25 to whether the Chairman and the Commissioner have  
26 a position on this.

1 I hadn't appreciated, I have to say, until the last  
2 24-48 hours that this is a matter that's perhaps more  
3 important than I had originally realised. We haven't  
4 looked at it yet but there's a rather important section  
5 in Mr Lumb's report, section 8, that deals with remedial  
6 measures. We don't need to look at it now. But there's  
7 some information there and I'd quite like to know where  
8 that came from, who gave that information to him,  
9 because it's quite obvious all his report is based upon  
10 what he was told by the people he interviewed. I'm  
11 going to give that some more thought.

12 I mention it because Leighton ought to know about  
13 it, just in case there's any problem with Mr Lumb's  
14 immediate availability. Sir, I mention that as  
15 a possibility and I'll come back to it in the morning,  
16 if I may.

17 CHAIRMAN: Yes, certainly.

18 COMMISSIONER HANSFORD: From my point of view, Mr Pennicott,  
19 please do, but I also would note that we're going to  
20 have a break of a week after this Friday, and it seems  
21 quite sensible to me that we hear from Mr Lumb before  
22 that break.

23 MR PENNICOTT: Yes, sir. I understand the point. Thank  
24 you.

25 CHAIRMAN: All right. Good. Thank you very much indeed.  
26 Tomorrow at 10 am.

1 COMMISSIONER HANSFORD: Do you want to remind the witness  
2 that he's still in the box?

3 CHAIRMAN: Yes, I'm sorry. Thank you very much.

4 It's just a formal reminder. I'm sure you're aware  
5 of the fact that you're still giving your evidence and  
6 while you're giving your evidence you're not entitled to  
7 discuss the merits or otherwise or tactics concerning  
8 your evidence, indeed anything at all about it, with any  
9 other third party, including your own lawyers.

10 WITNESS: Okay. Yes.

11 CHAIRMAN: Thank you very much.

12 (5.07 pm)

13 (The hearing adjourned until 10.00 am the following day)

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