

1 Wednesday, 14 November 2018

2 (10.03 am)

3 MR ANTHONY PETER ZERVAAS (on former oath)

4 Cross-examination by MR KHAW (continued)

5 MR KHAW: Good morning, sir. Good morning, Chairman.

6 Mr Zervaas, you remember yesterday we talked about
7 the briefing that Mr Stephen Lumb gave you in relation
8 to his investigation; do you remember that?

9 A. Yes.

10 Q. Just to recap a bit, you told us that he briefed you
11 about the NCR incident?

12 A. Yes, that was one of the briefing items, yes.

13 Q. But at that time you did not have a chance to read the
14 relevant documents regarding the NCR incident?

15 A. No, I didn't specifically look at documents, no.

16 Q. You also recall that he -- apart from the NCR incident,
17 he did not refer you to any other similar bar cutting
18 incidents found by Leighton?

19 A. That's correct.

20 Q. Before we adjourned yesterday, you also told us that
21 recently, ie before you came to attend this hearing, you
22 had a chance to have a look at the QSP regarding the
23 requirements for supervision and inspection of coupling
24 works; do you remember that?

25 A. Yes. I made myself familiar with the quality

26

1 supervision plan, not in detail but understanding what
2 it was for, specifically for couplers.

3 Q. Thank you. But it would be correct for me to say that
4 at the time when Mr Stephen Lumb gave you the briefing
5 about his investigation, at that time you did not have
6 knowledge in relation to the details about the
7 requirements for inspection and supervision of coupling
8 works; is it fair to say that?

9 A. Yes, that's right.

10 Q. Thank you. You also told us yesterday that you believe
11 not every installation of coupler would be looked at.
12 I suppose that is what you assume to be the case; is
13 that correct?

14 A. What I said was that there wouldn't be one of our
15 supervisors watching one installer. That was what
16 I meant.

17 Q. Fair enough. Thank you.

18 If I may trouble you to look at one of the
19 photographs that we saw yesterday: C12/8139.

20 You can take it from me that this is one of the
21 photographs attached to the NCR report. From this
22 photograph -- I believe I mentioned this yesterday as
23 well -- one can see that coupling works on the lower
24 layer of the reinforcement work was not done properly
25 before the upper layers of reinforcement bars were

26

1 placed; can you see that?

2 A. Yes.

3 CHAIRMAN: Sorry, just so that I understand that -- so these
4 point to what I might call the pattern, the lower
5 pattern of all the rebars together, and you are saying
6 this was not done before the upper level was done -- the
7 upper level being after the void -- I think there's
8 a concrete void in the middle, isn't there?

9 A. I took it just from looking at the photo that logic
10 would tell me that you would install like this
11 (demonstrating) --

12 CHAIRMAN: That's right.

13 A. -- install the horizontal bars vertically.

14 CHAIRMAN: So that's showing the lower layer of concrete
15 bars?

16 MR KHAW: Yes.

17 CHAIRMAN: Good.

18 A. That's the way I see it.

19 COMMISSIONER HANSFORD: Sorry, I'd like to understand. I've
20 seen this photograph many times but I'm just trying to
21 get my mind around exactly where this detail is. So are
22 we saying that those horizontal bars that we see behind
23 the vertical bar, that are not properly connected into
24 the couplers on the right-hand side of the photograph,
25 are we saying they are lower levels of reinforcement in

26

1 the slab; is that correct? I'm not sure who I'm posing
2 this question to, but I'm looking at Mr Pennicott at the
3 moment.

4 MR PENNICOTT: Sir, what I tried to do with at least one
5 witness is to try to pin it down to which area we're in,
6 and I think we have succeeded to some extent.

7 COMMISSIONER HANSFORD: Okay.

8 MR PENNICOTT: I myself remain slightly puzzled as to
9 precisely what it's showing and exactly where it is, and
10 which layer is which.

11 COMMISSIONER HANSFORD: Okay.

12 MR PENNICOTT: In many ways -- and I don't know whether
13 Mr Khaw is intending to go to it with Mr Zervaas -- you
14 sort of get a better perspective when you look at the
15 photographs that deal with how it was remedied. We've
16 seen a group of men stood around remedying it; you get
17 a better idea then as to what the problem was, where it
18 was and how they remedied it.

19 But this is very difficult to understand. All that
20 one knows, from the writing with the NCR, is that it is
21 the bottom layer.

22 COMMISSIONER HANSFORD: All right. That's helpful. And
23 when we get to Mr Edward Mok, he may be able to throw
24 a little bit more light on it.

25 MR PENNICOTT: He and possibly one or two others, yes. I'm
26

1 hoping so.

2 CHAIRMAN: Sorry, Mr Khaw, just so that I don't have any
3 misapprehension -- Mr Zervaas, you can educate me
4 briefly here. I know you are not a structural engineer
5 necessarily; you may be. If so, I accept that. But my
6 understanding is when you talk about an upper layer and
7 lower layer in this slab of reinforcing, they are
8 actually separated by some middle section,
9 essentially -- I called it a void earlier, but there's
10 ballast in there, concrete.

11 COMMISSIONER HANSFORD: Mass concrete.

12 A. Yes, but depending on the detail. If this was a big,
13 thick slab, you'd have a lower layer, a void, and then
14 an upper layer.

15 CHAIRMAN: Yes. Therefore it does become quite important
16 because the lower layer may be subject to different
17 dynamics than the upper layer. That's a very broad
18 term, "dynamics" -- forces?

19 A. Logically, that would be correct. You'd need to check
20 with the engineers.

21 CHAIRMAN: Of course. Thank you.

22 MR PENNICOTT: I think there's no dispute that this is the
23 bottom layer.

24 COMMISSIONER HANSFORD: That's helpful.

25 CHAIRMAN: Thank you. That's what counts. Where exactly it
26

1 is --

2 MR PENNICOTT: Which layers within the bottom layer we're
3 looking at, I'm not entirely sure, but this is a bottom
4 layer.

5 CHAIRMAN: The reason why I'm delaying matters is that
6 I want to understand, in simplistic terms, that the
7 reason why there is a difference between a bottom layer
8 and an upper layer is not simply physical location.
9 It's because, in the middle, it is separated by mass
10 concrete, and there are different forces applying to the
11 upper level from the lower level.

12 Good. Thank you.

13 MR KHAW: It's probably my use of the word "layer" which has
14 caused some confusion.

15 COMMISSIONER HANSFORD: No, it's been helpful.

16 CHAIRMAN: Sorry, could I ask another thing, because it's
17 purely and simply a question of terminology. I keep
18 having this sudden stop. What do you call, in
19 engineering terms -- like if we look at a photograph and
20 you see everybody is standing around on this mass of
21 reinforcing bars and sometimes they seem to put a bit of
22 plywood on top so that they can stand easily on it --
23 what do you call that great honeycomb of reinforcing?

24 A. Sir, look, there's many terminologies, but I would call
25 it the bottom mat. So there would be a mat at the

26

1 bottom layer.

2 CHAIRMAN: Thank you.

3 COMMISSIONER HANSFORD: "Mat" would be a good term.

4 A. And there would be timber laid out to make it easy to
5 walk across, easy to walk across for the work, so it
6 would be for worker safety --

7 CHAIRMAN: So you would have the top mat and the bottom mat?

8 A. That's how I would describe it.

9 COMMISSIONER HANSFORD: Together forming a cage?

10 A. Yes.

11 CHAIRMAN: Thank you very much.

12 MR KHAW: Since Mr Pennicott has just referred us to the
13 situation after rectification, perhaps I will just, for
14 the time being, bookmark one page for everyone's
15 reference. That is C27/20368.

16 That's just to show what Mr Pennicott has just
17 referred us to, but I will probably reserve questions in
18 relation to the rectification works for other witnesses.
19 But we can put a tag for the time being.

20 So, Mr Zervaas, if we go back to the picture that we
21 just saw at page 8139 in C12, looking at this picture
22 now, would you agree, as a project director, that this
23 may give rise to some concern as to whether supervision
24 and inspection work had been done properly?

25 A. I think I said this yesterday, that if the defect or the
26

1 non-conformance has been observed, they'd rectify it
2 immediately. So that would suggest to me that the
3 system works, you know, with -- the guys were there,
4 they saw it and they fixed it.

5 Q. Back to the briefing given by Mr Lumb to you, did he
6 actually mention to you how exactly inspection and
7 supervision work was done for coupling work?

8 A. No.

9 Q. Thank you. Did he mention to you what was the actual
10 cause or reason for the bar cutting incident as found in
11 the NCR?

12 A. No, no reason.

13 Q. Mr Zervaas, to put it this way, without knowing -- all
14 similar bar cutting incidents which happened before the
15 briefing, without knowing the actual cause or reason for
16 the bar cutting incident as reported in the NCR, without
17 knowing how supervision and inspection work was actually
18 done, would you agree that you did not have a sufficient
19 basis to come to a conclusion that there was no evidence
20 in support of Mr Jason Poon's allegation at that time,
21 simply after you had a briefing session with Mr Lumb;
22 would you agree?

23 A. His briefing session was that this was a one-off
24 incident, that he described to me at the time, our guys
25 fixed it -- observed it and we fixed it. He also spoke
26

1 about how site supervision plans -- he looked at our
2 records and his feedback to me was that our records
3 would not indicate that -- would not indicate or support
4 Mr Poon's false allegation.

5 Q. Thank you.

6 If we go back to paragraph 19 of your first witness
7 statement, at bundle C12/7676 -- in the last sentence of
8 this paragraph, you say:

9 "I recall being briefed by Stephen Lumb that
10 Leighton could not find any evidence to suggest there
11 was any malpractice as Poon had alleged."

12 So I take it that Mr Lumb briefed you in around
13 January 2017; is that correct?

14 A. Correct.

15 Q. Because we saw that his draft report actually came out
16 at around that time.

17 If I can then ask you to take a look at paragraph 11
18 of your first witness statement. There, you were
19 referring to the email sent by Mr Poon on 6 January
20 2017.

21 A. Yes.

22 Q. If you can jump to paragraph 22:

23 "On 15 September ..."

24 That particular date has been referred to many times
25 already.

26

1 A. Okay.

2 Q. "... when I was in Macau handling another of Leighton's
3 project, I received a call from Poon. I believe Poon
4 called me because Jon Kitching was away, and he asked me
5 what was happening to his payments. I told Poon that
6 I was going into a client meeting and I offered to meet
7 him the following morning on site."

8 Then at paragraph 23 you refer to two emails:

9 "The first email was sent to me as a reply to his
10 email ..."

11 That is Leighton's reply to Jason Poon's email, and
12 also the second email was the email Jason Poon sent to
13 Frank Chan.

14 If we have a quick look at the first email at C12,
15 page 7986. This is the email dated 15 September from
16 China Tech to Leighton, and it talked about "public
17 safety and durability of the structurally critical 3m
18 thick EWL slab", and then here it also talks about
19 structural safety and it also mentioned the threads,
20 estimated over 30,000 pieces involved, so there was
21 a number given here.

22 So this email refers to his complaint about the
23 structural issue. If we can look at his email to the
24 Secretary for Transport and Housing -- the same bundle,
25 7990 -- and it also relates to his invitation for review

26

1 of an important issue which is in the interests of the
2 public, even though details were not given here.

3 So, on 15 September, you got hold of these two
4 emails; you knew about his allegations, right?

5 A. Yes.

6 Q. Then you told us, in paragraph 23, that -- in 22 you
7 said initially you were in Macau and then you agreed to
8 meet him the following morning --

9 A. I offered to meet him the next morning.

10 Q. After --

11 A. I offered to meet him the next morning.

12 Q. Yes, offered to meet him --

13 A. He was wanting to talk about payment, and I offered to
14 meet him the next morning.

15 Q. Yes. But is it right that you then changed your mind
16 and decided to come back to immediately to see him?

17 A. No. I went into a meeting. I stated that earlier.
18 I actually went into a meeting with the client. What
19 I did say was I came back earlier than what I would
20 normally do. I would usually spend the whole day in
21 Macau.

22 Q. But in 24 you said:

23 "I was concerned about Poon's telephone call and
24 emails. I therefore returned to Hong Kong and arranged
25 to meet Poon at Leighton's head office in the afternoon
26

1 of the same day."

2 A. Correct.

3 Q. I suppose that that day was 15 September; is that
4 correct?

5 A. Yes.

6 Q. So it was because of his two emails which caused you
7 concern, which caused you to change your mind, to come
8 back to Hong Kong to see him immediately; is that right?

9 A. Well, we -- yes. We had previously issued breach
10 letters to Mr Poon, I think it was on the 11th and the
11 13th, so there was a commercial dispute that was
12 emerging, and we were, for want of a better word,
13 getting ready to terminate his contract due to poor
14 performance. He called me about payment. Because
15 I didn't give him a response -- he said, "Can I have
16 a cheque today? Are you going to pay me today?"
17 I said, "Look, I don't have the details, I'm in Macau",
18 and then he made the threats. Then I went into
19 a meeting. Then, after the meeting, because of the
20 threats and the payment issue, I decided to return to
21 Hong Kong.

22 Q. Right. I'll try to understand what you just told us.
23 Putting aside the payment issue for the time being -- we
24 heard a lot about payment issues --

25 A. Yes.

26

1 Q. -- initially you offered to meet him the following day,
2 ie 16 September; right?

3 A. Yes.

4 Q. But then you decided that you had to see him
5 immediately, on 15 September?

6 A. I thought it was -- I thought we should talk to him that
7 day because of the allegations he was making, yes.

8 Q. But, at that time, do you agree that you already --
9 according to your evidence at least -- Mr Lumb already
10 briefed you regarding the investigation, so, in your
11 mind, his allegation could not be substantiated; that
12 must be the case, right?

13 A. Yes.

14 Q. So how come his allegations made in the two emails made
15 you decide to come back immediately to see him? Why?
16 What was the concern?

17 A. As I said, because he was continuing to make the false
18 allegations, linked with a payment issue.

19 Q. First of all, just as a matter of common sense, on the
20 one hand there were payment issues; right? We all agree
21 there were payment issues that you had to resolve. But
22 the payment issue, the existence of a payment issue,
23 does not necessarily mean that his allegation could be
24 completely dismissed; do you agree?

25 A. He was trying to apply pressure, okay, to be paid; okay?

26

1 That's what he was doing. In my mind, he was applying
2 pressure to get paid; okay?

3 Q. But what I don't understand is that at that time,
4 Leighton have done an investigation, Mr Lumb told you,
5 "No problem, this could not be substantiated at all."
6 You could just simply tell Mr Jason Poon, "Hey, payment
7 issues we can sort out, but how come you make false
8 allegations? Go away. Go away"; why not?

9 A. Because he continued to make false allegations. I keep
10 saying that. I don't understand what you're trying to
11 tell me. He was using this issue to try to apply
12 pressure; okay?

13 Q. So is it fair to say that Leighton was worried about his
14 allegations?

15 A. I personally wasn't. I never believed his allegations.
16 They were false. They were full of lies; okay?

17 Q. But at least from your point of view, his allegations
18 necessitated immediate attention, at least --

19 A. He had written to the Secretary for Transport; okay? He
20 was escalating the issue, unnecessarily; okay?

21 Q. But given Leighton's investigation -- and you were
22 satisfied that nothing was wrong -- whoever Jason Poon
23 wrote to, you could easily tell everybody, "Come on, his
24 allegation is false. We can justify that we are
25 completely all right"; you could tell everybody about
26

1 that, right?

2 A. You are isolating the incident. We, on the 11th and
3 13th, had sent him letters. There was poor performance
4 on site. He was pressuring the site team to be paid;
5 okay? It came to the Friday and he was continuing to
6 pursue his false allegations. This needed to come to
7 a head.

8 Q. Fine. The last issue that I wish to just very quickly
9 discuss with you is this. If you can take a look at
10 your second witness statement, C32/24660. Here, you
11 told us:

12 "I did not have any meeting with Jason Poon and Karl
13 Speed on 18 September 2017. This is confirmed by my
14 Outlook calendar on 18 September ... As shown in my
15 Outlook calendar, I was at site office of Liantang
16 project in Liantang until around 2.30 pm. After the
17 meeting in Liantang, I drove to Leighton's offices ...
18 Therefore, I would not have been able to meet with Jason
19 Poon at around 3 pm on [the 18th]".

20 Here, you deny having a meeting with Jason Poon on
21 18 September 2017, after you had a chance to check your
22 records.

23 A. No, I deny having a -- I said we didn't have a meeting.
24 This was in response to Poon's witness statement, where
25 he stated that Karl and I had met with Jason on the
26

1 18th, and that was at 3 pm. He was precise about a time
2 and he was precise about who was there; okay? This was
3 simply responding to his witness statement.

4 Q. Yes, I know, but it seems to me that when you were
5 making this responsive statement, obviously you had
6 a chance to check your own calendar, your own records,
7 and obviously at that time you were able to tell us
8 whether you actually had a meeting with Jason Poon or
9 not?

10 A. At this time?

11 Q. Yes.

12 A. What I overlooked in the first statement was that he
13 signed the final accounts on the 18th; okay? And what
14 I do recall is that I came back from a meeting in
15 Wan Chai, there was a JV board meeting that I came back
16 from, and I think I arrived back at head office about
17 5 o'clock, where our commercial manager and legal
18 counsel had prepared the final account and
19 confidentiality agreement. Jason was waiting there to
20 sign, and we went into the room where the documents were
21 presented for Jason to sign; okay?

22 Q. Yes.

23 A. So that wasn't in my calendar because it was
24 an ad hoc -- call it an ad hoc meeting. But it was
25 really a document-signing session.

26

1 Q. In fact, my question earlier on was a straightforward
2 one. I was just curious as to whether, at a time when
3 you were preparing your responsive statement here, did
4 you have a chance to check your diary records to confirm
5 whether you in fact had a meeting with Jason Poon on
6 18 September?

7 A. No, I didn't go that far. Apologies. I was just
8 responding to the witness statement; okay?

9 Q. Fine.

10 Then in your third witness statement, 26503 -- this
11 is another responsive statement -- (i) at the top, once
12 again you said:

13 "I did not have any meeting with Jason Poon and Karl
14 Speed on 18 September ..."

15 Then you continue to say:

16 "I could not have attended any meeting with Jason
17 Poon at around 3 pm on 18 September 2017 given my
18 meeting schedule on that day ..."

19 Again, this is your second responsive statement. At
20 the time when you made your statement, did you have
21 a chance to check your records and diary to see whether
22 you in fact had a meeting with Jason Poon on that
23 particular day?

24 A. No, because I was looking at the specific time, 3 pm,
25 and it was in response to whether we had met with Jason

26

1 and Karl.

2 Q. Right. So actually, you did not apply your mind as to
3 whether it was necessary to check whether you had
4 a meeting with Jason Poon later?

5 A. I was simply responding to the allegations. I wasn't
6 adding anything extra.

7 Q. Right. Then finally, in your fourth witness statement,
8 26575, paragraph 6 -- so you finally said, 6(a):

9 "I attended a meeting with Jason Poon and Mark
10 Manning in the late afternoon around 5.15 pm on
11 18 September after attending the Liantang project site
12 meeting and another meeting in Wan Chai".

13 A. Correct.

14 Q. So what made you at that time able to discover that you
15 in fact had a meeting with Jason Poon on 18 September?

16 A. I was preparing for today and I was going through the
17 witness statements and I was checking the appendices,
18 and I saw that Jason had actually signed the agreement,
19 final account agreement, on the 18th; okay? And that's
20 where I discovered the anomaly; okay?

21 Q. If we can cast your mind back to your meeting with Jason
22 Poon on 15 September. You just told us that it was his
23 allegation, as stated in these two emails, which
24 triggered you to come back to Hong Kong to see him, to
25 deal with it; right?

26

1 A. I didn't say -- that wasn't the only thing. It was his
2 manner, the way he hung up on me. He was demanding
3 payment. I was aware that we had sent letters to him
4 because we felt he was breaching contract. So there
5 was -- it was more than just one email.

6 Q. A combination?

7 A. A combination, yeah.

8 Q. And at least the allegation he made in the two emails
9 was one of the reasons --

10 A. Correct.

11 Q. -- which caused you to come back immediately.

12 If that is the case, can you confirm that at that
13 meeting on 15 September, no mention whatsoever was made
14 regarding his allegation? Are you absolutely clear?

15 A. Yeah, I'm clear on that. He wasn't interested. He was
16 only interested in pursuing money.

17 Q. If we can go back to your fourth witness statement,
18 regarding what happened at the meeting on 18 September,
19 26575, paragraph 6(c)(ii). You said:

20 "Jason Poon did not agree 'not to disclose the
21 matter [the alleged cutting of threaded ends of rebars]
22 to anyone, including the government' ..."

23 Pausing here, you said Jason Poon did not agree not
24 to do this, that's a double negative, but regardless of
25 the semantics here, are you saying that this issue

26

1 regarding whether Jason Poon should disclose or should
2 not disclose the matter regarding cutting of threaded
3 rebars to anybody, including the government, this issue
4 was in fact mentioned or discussed at the meeting on
5 18 September?

6 A. It wasn't -- it wasn't discussed. This was again in
7 response to previous statements by Poon. At this time,
8 he had already sent an email to government.

9 Q. It's just the way you put this particular issue in your
10 witness statement which has caused me to just clarify
11 this with you.

12 A. Okay. Yeah. It wasn't discussed.

13 Q. Right. So what you meant was that in fact this issue --

14 A. Was not discussed.

15 Q. -- was not mentioned at all?

16 A. Was not mentioned at all, yes.

17 MR KHAW: I have no further questions.

18 Questioning by THE COMMISSIONERS

19 CHAIRMAN: All right. Sorry, could I just ask, just so
20 I get to understand it -- I appreciate fully that you
21 were across in Macau. You've got to look at these
22 matters in the round. There was a history of poor
23 performance on site. Jason Poon was pressuring
24 everybody to be paid, and he was continuing with his
25 false allegations, he had escalated matters by

26

1 contacting government, he had hung up in the telephone
2 conversation, suggesting impulsive conduct to you.

3 A. Mm-hmm.

4 CHAIRMAN: You wanted to get back, you wanted to bring this
5 to a head and solve it; that would be a fair way of
6 putting it --

7 A. Yes, correct.

8 CHAIRMAN: -- using a lot of your words?

9 A. Yes, correct.

10 CHAIRMAN: And as matters turned out, he did sign a final
11 account and it was agreed he would end his contractual
12 relationship with you in respect of this particular
13 contract, and he signed a confidentiality agreement, and
14 he signed that because principally, among other things
15 but principally, both you and Mr Speed were of the view
16 that his false allegations had to be dealt with as well,
17 and the best way to deal with it was for him to agree
18 not to spread them further?

19 A. Or make further allegations.

20 CHAIRMAN: Or make further allegations of any kind.

21 A. You know, making up allegations, yeah. That's correct.

22 CHAIRMAN: But during those meetings that you had after you
23 came back from Macau until eventually it was finished,
24 an outsider might ask: But surely you must have had some
25 sort of discussion about these allegations, like "We are
26

1 going to want you to sign a confidentiality agreement
2 because we don't want you making further false
3 allegations", or he might have said something along the
4 lines of, "You know, I feel quite strongly about my
5 allegations and I think somebody needs to look into it",
6 or something.

7 A. He was fixated on payment. When we were talking --
8 having commercial discussions, I saw it -- it was his
9 way to get people to the table, to talk about money. He
10 was never interested in the actual allegation.

11 CHAIRMAN: All right. That's an assessment on your part.

12 A. Yes.

13 CHAIRMAN: And I'm not rejecting it.

14 A. Okay.

15 CHAIRMAN: I'm just saying that when you've got
16 a confidentiality agreement in the mix, it seems strange
17 that there would have been no conversation at all about
18 his allegations.

19 A. He was -- as I said, I put it to him, "How are we going
20 to prevent you from continuing to make false
21 allegations?" He just shrugged his shoulders and
22 I said, "Let's sign a confidentiality agreement to stop
23 this from happening. We don't want" -- it was all about
24 the relationship at the time, to make sure we continue
25 to have a working relationship. You can't continue

26

1 working like this, so yes, there was --

2 CHAIRMAN: So he made no protest?

3 A. No, not at all.

4 CHAIRMAN: By which I mean not even an equivocal protest,
5 such as, "I feel strongly about this, you know how
6 I feel, I'm going to leave it up to you guys to look
7 into this, but I'm still happy to sign the
8 confidentiality agreement", et cetera?

9 A. No.

10 CHAIRMAN: Nothing along those lines?

11 A. Nothing at all, no.

12 CHAIRMAN: You didn't find that strange or anything like
13 that?

14 A. It confirms to me what his motives were.

15 CHAIRMAN: Okay. And nothing said to Mr Speed that you can
16 remember along those lines or --

17 A. No, absolutely not.

18 CHAIRMAN: Thank you.

19 MR BOULDING: No questions from MTR, sir.

20 CHAIRMAN: Thank you very much.

21 MR WILKEN: Sir, some limited re-examination.

22 CHAIRMAN: Yes, of course.

23 Re-examination by MR WILKEN

24 MR WILKEN: You were taken by Mr Khaw to your fourth witness
25 statement and subparagraph (c)(ii), which should still

26

1 be on your screen.

2 A. Yes.

3 Q. Your fourth witness statement is a responsive statement,
4 isn't it?

5 A. Yes.

6 Q. Can I just take you to that which you were responding
7 to, which is at D2/1062. If you can look at the box
8 against 18 September, and the last four lines.

9 A. Four or three? The first box, you're talking about?

10 Q. Yes:

11 "As such, Poon agreed not to disclose the matter to
12 anyone, including the government ..."

13 A. Yes. I was denying, yes, that didn't happen.

14 Q. So that's what you were responding to?

15 A. Correct.

16 Q. You were also taken by Mr Khaw this morning to why you
17 reacted the way you did in September, when Mr Poon
18 started making allegations again.

19 Can I take you to Mr Rooney's statement, which you
20 may not have seen before: B1, page 205. This is in
21 relation to January, and it's paragraph 73, the passage
22 in italics. Here he says:

23 "In this regard, I have re-read an email I sent to
24 TM Lee on 6 January 2017, where I said ..."

25 And then the second paragraph:

26

1 "This is a part of Jason's strategy to put pressure
2 on Leighton to pay him the extra \$3 million this week."

3 Then if you go to page 206, paragraph 77:

4 "Given that we had concluded there was no need to
5 carry out any further follow-up action after Leighton's
6 investigation and MTRCL's review in around
7 January/February 2017, one of my main concerns at that
8 time was to keep RDO informed and to prepare a line to
9 take for a potential media release. There was no reason
10 to revisit Jason Poon's allegations as Jason Poon had
11 not provided any more relevant factual information."

12 So that was Mr Rooney's internal view at the time.
13 Would you care to comment?

14 A. Sorry, can you just take me through that again? The
15 page was flicking around, sorry.

16 Q. Page 206, paragraph 77.

17 That's a better way of doing it; thank you very
18 much.

19 A. Correct.

20 Q. So that's Mr Rooney's internal view.

21 A. Yes.

22 Q. Would you care to comment?

23 A. I agree with him.

24 Q. I will move on to the next topic. Yesterday,
25 Mr Pennicott asked you about some emails in January

26

1 2017; do you remember that? Emails from Jason Poon.

2 A. 2017? Specifically --

3 Q. 6 January.

4 A. -- 6 January? Yes, I do remember that.

5 Q. He said to you then that you were to take it from him
6 that any photographs that there were were attached to
7 the email of 7 January 2017; do you remember that?

8 A. Yes. Yes.

9 Q. Can you go to C12/7923, please. This is an email dated
10 6 January 2017 --

11 A. Yes.

12 Q. -- at 9.45 am from China Tech. Can you go to 7929, so
13 just scroll through. You see the email below. Scroll
14 through. Over to the next page. Over to the next page.
15 And you see there, there are photographs attached to the
16 email?

17 A. Yes.

18 Q. Can you then compare, in the same volume, 7940. This is
19 the email of 7 January, where we have Mr Poon saying,
20 "Call a spade a spade, it is your unfair commercial
21 manner leading to our action on commercial review,
22 include review on hundred thousands of site record ..."

23 Then if you scroll down, over the page -- scroll
24 down -- over the page, scroll down, over the page --
25 there are no photographs attached there, are there?

26

1 A. No, there are not.

2 Q. So to which email does it appear the photographs were
3 attached, from the information --

4 A. For me, 6 January was my understanding.

5 Q. One final topic: honeycombing of concrete. Can
6 honeycombing of concrete occur over a period of time?

7 A. No, not that I'm aware of.

8 Q. I thought you suggested yesterday there could be
9 crusting?

10 A. Well, no. When you say appear over a period time --
11 sorry, appear, yes, can appear, but obviously the
12 situation has already occurred, yes, and then there
13 would be what I suggested yesterday, it's feasible that
14 there was -- when you strike the formwork, there would
15 be a slurry coat, it could be 2mm or 3mm, where you
16 wouldn't -- when you initially strike, and for some
17 period of time, you wouldn't see the honeycombing,
18 correct.

19 Q. Can you go to -- I hope I've got the reference right --
20 B5, and it's tab 44.3 and area C1-0, and if you look at
21 the last photo, the one on the far right -- I believe
22 you were shown this photograph yesterday by Mr To?

23 A. Yeah, it looks familiar.

24 Q. Can you look at the date there?

25 A. Anzac Day, 2016.

26

1 Q. 25 April.

2 A. Yes, sorry.

3 Q. Can you then go to the Atkins report, B17/14253,
4 number 64, and can you see the date there?

5 A. 10 September 2018.

6 Q. So one was taken two years ago and one was taken
7 recently?

8 A. Correct.

9 Q. Mr Shieh reminds me, if we can go back to C12 -- I just
10 want to show you one more passage -- 7937 -- you will
11 see there, in the text of the email of 6 January down at
12 the bottom, just so that everybody is absolutely clear:

13 "We attach herewith two of the found photos ..."

14 A. Yes.

15 MR WILKEN: No further questions.

16 Questioning by THE COMMISSIONERS

17 CHAIRMAN: Just one matter, and obviously counsel can follow
18 up if they wish, just for clarification, it's my
19 understanding that when Jason Poon contacted you on
20 15 September -- you have it in your statement -- during
21 that conversation, because he raised the alleged cutting
22 of threaded rebars again, you told him that, going back
23 to January, you had reported the incident and there had
24 been an investigation?

25 A. Correct.

26

1 CHAIRMAN: And that investigation had not found any evidence
2 of systematic or widespread cutting of rebars.

3 A. I recall saying that to him, yes.

4 CHAIRMAN: Did he say anything in reply, make any protest
5 such as "Why didn't you tell me" or "I was not involved"
6 or anything like that?

7 A. No. He was just fixated on, "Are you going to pay me?"
8 The determined conversation was about getting paid.
9 That's what he was agitated about.

10 CHAIRMAN: You don't recall any discussion about that?

11 A. No.

12 CHAIRMAN: Or any expansion by you as to what the findings
13 had been?

14 A. No. No expansion and there was no questions, line of
15 questioning, from Mr Poon on it.

16 CHAIRMAN: All right. Fine. Thank you.

17 Nothing further? Thank you very much, Mr Zervaas.
18 Your evidence is finished. It may be necessary,
19 hopefully not, it hasn't happened yet, to recall
20 witnesses, in which case we will contact you.

21 WITNESS: Okay.

22 CHAIRMAN: Thank you.

23 (The witness was released)

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

25 Before we call him, a quick update on Mr Lumb.

26

1 I understand, helpfully, from Mr Wilken this morning,
2 that a brief further witness statement from Mr Lumb is
3 in the course of preparation, and it will, we
4 understand, identify the people to whom Mr Lumb and his
5 team spoke for the purposes of preparing the report.
6 I am happy with that course of action at this stage.
7 When I've seen and considered that further witness
8 statement, we will then take a view about when Mr Lumb
9 should be called.

10 One concern I do have is that if we were to call
11 Mr Lumb sooner rather than later, he might have to then
12 come back subsequently, because he deals with two
13 separate topics in his witness statement. One is his
14 report and matters connected with it, but he also deals
15 with the change of the detail to the top of the east
16 diaphragm wall, and we didn't really want to get into
17 that second topic with him at this stage because we've
18 got three other witnesses -- Mr Brewster, Mr Buckland
19 and Mr Taylor -- who deal with that, and we rather
20 wanted to keep that as a separate package at the end.
21 So we didn't really want to trouble Mr Lumb twice, if we
22 can avoid it.

23 Anyway, that's what's happening.

24 CHAIRMAN: Thank you very much.

25 COMMISSIONER HANSFORD: Mr Pennicott, while you are on your
26

1 feet --

2 MR PENNICOTT: Yes, sir.

3 COMMISSIONER HANSFORD: -- yesterday we were talking about
4 the site boundaries and the site gates, when we were
5 with Mr Ngai, if you recall.

6 MR PENNICOTT: Yes.

7 COMMISSIONER HANSFORD: And I asked whether there was
8 a gate 4.

9 MR PENNICOTT: Yes.

10 COMMISSIONER HANSFORD: I have since learnt that that was
11 a bit of a naive question, because apparently
12 construction sites in the Chinese culture don't have
13 a gate 4 because, I understand, gate 4 would be unlucky
14 and no one would want to go through them.

15 MR PENNICOTT: That's entirely right, sir.

16 COMMISSIONER HANSFORD: Well, no one corrected me yesterday.
17 And consequently I understand you would therefore go
18 from gate 3 to gate 5 in sequence. I just wanted to
19 point out that I now understand that; error of my ways.

20 MR PENNICOTT: It does raise the question as to where gate 2
21 is, but never mind. There we are.

22 Sir, I think Mr Rawsthorne.

23 MR WILKEN: Mr Chairman and Professor, can I call
24 Mr Rawsthorne, please?

25 CHAIRMAN: Yes.

26

1 MR WILKEN: Good morning, Mr Rawsthorne.

2 WITNESS: Good morning.

3 MR WILKEN: Can you give your full name to the tribunal,
4 please?

5 WITNESS: My full name is Ian Noel Rawsthorne.

6 MR IAN NOEL RAWSTHORNE (affirmed)

7 Examination-in-chief by MR WILKEN

8 MR WILKEN: Can you be shown C27, page 20691. That is the
9 first page of your witness statement, isn't it?

10 A. Yes.

11 Q. Then can you go to 20696. Is that your signature?

12 A. Yes.

13 Q. And it's dated 2 October 2018?

14 A. Yes.

15 Q. That is the only witness statement you've given to this
16 Inquiry?

17 A. Yes.

18 Q. Are its contents true and correct?

19 A. Yes.

20 Q. Are there any corrections you would like to make?

21 A. No.

22 Q. Do you adopt that statement as your evidence before this
23 Inquiry?

24 A. Yes.

25 MR WILKEN: Thank you. Please wait there. Mr Pennicott,

26

1 who is counsel to the Inquiry, the gentleman to my left,
2 will have some questions. Then there are other counsel
3 dotted around who may have some questions, and in due
4 course the Commissioner and the professor may also have
5 some questions for you.

6 WITNESS: Thank you.

7 Examination by MR PENNICOTT

8 MR PENNICOTT: Good morning, Mr Rawsthorne. As Mr Wilken
9 said, I am one of the counsel for the Commission and
10 I have a few questions for you. Thank you very much for
11 coming along to give evidence to the Inquiry this
12 morning.

13 I understand you are no longer working for Leighton;
14 is that right?

15 A. That's correct, yes.

16 Q. You were, however, the project manager for Leighton, as
17 I understand it, between September 2014 and November
18 2017?

19 A. That's the period I was on the project, yes.

20 Q. So your involvement with the project spanned -- when you
21 arrived, the D-walls, the diaphragm walls, were still in
22 the course of being constructed?

23 A. Yes, they were.

24 Q. I think they had something like nine or ten months to go
25 because they finished in around May/June 2015?

26

1 A. July is the date I have in my head, but similar.

2 Q. Okay. So you had seen the tail end or the last nine or
3 ten months of the diaphragm wall construction, and then
4 obviously right through the construction of the EWL
5 slab, the NSL slab, and no doubt much other work
6 besides?

7 A. True.

8 Q. So one of the longer-term people with involvement in
9 this project, it would appear, from my perspective,
10 Mr Rawsthorne; you would agree with that?

11 A. Others have been there longer, but yes, I was there for
12 three years.

13 Q. And you saw a number of project directors come and go?

14 A. Two.

15 Q. Your duties and responsibilities included, as
16 I understand it, attending the weekly site walk which
17 normally happened on a Monday morning, as I understand
18 it?

19 A. Correct.

20 Q. Who was the most senior person from Leighton attending
21 that Monday morning site walk?

22 A. Always the project director, but from time to time the
23 operations manager would be there as well, certainly in
24 the 2015 period Paul Freeman was there as the operations
25 manager, more often than not.

26

1 Q. So in those days it would be Paul Freeman sometimes,
2 Mr Plummer, yourself, and others?

3 A. Yes. Typically the area managers, the construction
4 managers, would join their section of the walk.

5 Q. And there were, as I understand it, MTRC representatives
6 there as well?

7 A. Always.

8 Q. And who were the senior people from MTRC who would be
9 there?

10 A. The senior would have been Aidan Rooney. In the period
11 up to the end of 2015, it would have been also with
12 Brendan Reilly and Kit Chan, typically those three.

13 Q. I understand that at times representatives of
14 sub-contractors would also attend those walks; is that
15 correct?

16 A. Not typically but there were sideline discussions from
17 time to time, yes.

18 Q. Right. And if the sub-contractors did turn up -- and
19 I think we heard some evidence that Mr Poon from China
20 Technology, and Mr Cheung from Fang Sheung would
21 occasionally go on these Monday morning site walks --
22 would that be an opportunity for people to raise any
23 particular issues that they might have? What was the
24 general purpose of these walks?

25 A. I think the general purpose was to identify what issues
26

1 were impeding the progress of the project.

2 Q. Right. If the sub-contractors were there, whether it
3 was Mr Poon or somebody else, would Leighton have any
4 problem with Mr Poon speaking directly, say, to
5 Mr Rooney from MTRC, when the walk was taking place?

6 A. Not necessarily. I don't think so.

7 Q. Because that would be a situation where a sub-contractor
8 was, as it were, speaking not to the party that it was
9 contracted to, namely Leighton, but would be talking to
10 MTR, but you didn't have a problem with that, if it
11 occurred?

12 A. In the context of 1112, it was a target cost project
13 which to some extent is a partnering project, so the MTR
14 were very hands-on with the project.

15 Q. Right. But people could speak freely during the course
16 of those site walks on a Monday morning?

17 A. Yeah, mostly, yes.

18 Q. How long would they last, the site walks?

19 A. Most of the morning, maybe 8 to 11, something like that,
20 8 to 10.30.

21 Q. And the walk would obviously focus on the work -- the
22 areas where the work was proceeding at any given time?

23 A. Yes. It was a big project.

24 Q. Yes, huge.

25 A. So it wasn't just the HUH which we're talking about. It

26

1 was all the other elements of the job as well that were
2 part of that walk.

3 Q. All right. Can I move on. So far as Leighton is
4 concerned, who ultimately was responsible for allocating
5 your supervisory and inspection resources?

6 A. In terms of the overall headcount on the project, that
7 would be through the project director, in negotiation
8 with the operations manager. Thereafter, the allocation
9 to the various teams -- because we had five to six
10 separate sections of the job -- was on a needs basis,
11 generally through negotiation with myself and the
12 project director.

13 Q. Right. So the construction managers responsible for
14 each of the areas you've identified, in discussion with
15 yourself and the project director, would form a view as
16 to what -- let's focus on supervisory first --
17 supervisory requirements each area had?

18 A. The supervisory was slightly different, because that
19 would be through the site manager.

20 Q. Right.

21 A. A similar process, but the site manager, the supervision
22 team basically reported up through the site manager.

23 Q. And the site manager reported to you?

24 A. In the early days reported directly to the project
25 director, subsequently to me.

26

1 Q. Understood. So inspection was a different process --
2 similar process?

3 A. Inspection would have been through the engineering
4 stream, if you like, yeah.

5 Q. Right.

6 COMMISSIONER HANSFORD: Sorry, just so that I can understand
7 this -- we've got two parallel functions, is that right,
8 one supervision and one inspection?

9 A. One is supervision and one is engineering.

10 COMMISSIONER HANSFORD: One is engineering?

11 A. Yes.

12 COMMISSIONER HANSFORD: And the inspection happens under
13 engineering?

14 A. Typically, yes, almost in every case.

15 COMMISSIONER HANSFORD: Thank you.

16 MR PENNICOTT: Right. We know that, for example,
17 Gabriel So, who we're going to be hearing from a little
18 later --

19 A. Yes.

20 Q. -- was the general superintendent. So he would be on
21 the supervisory side, would he?

22 A. Sure.

23 Q. And anybody under him, like Mr Rodgers, would be on --

24 A. Yes.

25 Q. -- that side, the supervisory side? All right.

26

1 Could I ask you, please, to look at paragraph 12 of
2 your witness statement. That's in C27/20962, where you
3 give some detail about the construction engineering
4 team. You say:

5 "The construction engineering team conducted the
6 quality inspections of the works (including the formal
7 inspections for rebar fixing and pre-pour checks). The
8 teams comprised experienced, qualified and competent
9 engineers who I relied on to conduct the
10 supervision/inspection process. I was not personally
11 involved in the supervision/inspection process. I do
12 not recall being informed of any issues arising with the
13 supervision/inspection process. As far as I was aware,
14 the process ran smoothly and effectively."

15 Now, you have used the word "process" four times in
16 that paragraph, and I think you're talking about, as you
17 say, the process of inspection and supervision, rather
18 than problems or issues that may have been picked up as
19 a consequence of the inspections taking place. Are you
20 drawing a distinction?

21 A. Can you repeat that, please?

22 Q. Yes, sure. You emphasised the process. You, as the
23 project manager, were presumably responsible or needed
24 to be assured that the process of inspection was taking
25 place properly?

26

1 A. Yes.

2 Q. So would you be advised if something had gone wrong with
3 the process; shortage of inspectors, not enough
4 inspectors in one particular area, that sort of thing,
5 ie part of the process?

6 A. On a day-to-day basis, no. No. The construction
7 manager would organise that himself.

8 Q. Right.

9 A. If there was a more deeper problem, a more recurrent
10 problem, that would be raised, but I can't think of
11 a case of that off the top of my head.

12 Q. Okay. But if the construction manager had formed the
13 view that there had been a misallocation of resources,
14 ie they needed more inspectors in one area rather than
15 another area, would that have been the sort of problem
16 that would have been referred to you?

17 A. The construction manager would identify the shortage of
18 people or a need for an extra site agent, an extra grad
19 engineer, an extra whatever, he would raise that and we
20 would try to negotiate that through the project director
21 and the operations manager and try to source additional
22 people, as we did very, very often, from various other
23 projects or from the market.

24 Q. That's really what I was getting at, Mr Rawsthorne, in
25 terms of process.

26

1 Now, in terms of inspections taking place and
2 problems being identified, issues being identified, in
3 what circumstances would you, as the project manager, be
4 informed of those sorts of issues and problems?

5 A. Probably if where was a time issue. Probably if there
6 was a time issue. If a planned pour hadn't happened,
7 what was the problem, maybe there was an issue with X.

8 Q. If I can just try to get at this in a slightly different
9 way, Mr Rawsthorne. We know, for example, in the
10 sub-contracts with China Technology and Fang Sheung, to
11 take two examples, you have in those sub-contracts
12 a process or a system of what is known as agreed fees.
13 That is, if the sub-contractor fails to do certain
14 things, you impose, if you like, an agreed fee,
15 an amount of money upon them for that failure.

16 A. Okay.

17 Q. Do you understand in terms what I'm talking about?

18 A. Yes.

19 Q. If we can perhaps just look at one example of this:

20 D1/130. This is broken down into different parts. This
21 is the safety and security part.

22 A. Mm-hmm.

23 Q. I think there's also an environmental part as well,
24 Mr Rawsthorne.

25 COMMISSIONER HANSFORD: Sorry, which sub-contract is this?

26

1 MR PENNICOTT: This is the China Technology contract.

2 Sorry, I should have said that. It's the China
3 Technology contract. But I think you will find it's the
4 same with Fang Sheung as well.

5 We see the very first example:

6 "Failure to comply with contractual requirements,
7 particular specification for site safety, statutory
8 requirements, occupational safety and health ordinances,
9 safety legislation and/or regulations, codes of
10 practice, industrial guidelines, CIC guidelines,
11 technical circulars, project safety plans and safety
12 standards."

13 That's the first one. And if there's a breach, if
14 there's a failure in respect of any of those items,
15 essentially, although it's called an administrative fee,
16 the contractor either has to pay or gets docked \$10,000;
17 do you see that?

18 A. Yes.

19 Q. The various failures that we see here -- and they go on
20 for a number of pages, I wasn't going to look at all of
21 them -- who was responsible for administering this
22 system? Is that you, or is it the construction manager,
23 the site agent? Who deals with these sorts of things?

24 A. This is principally focused on safety because that was
25 a huge emphasis within the Leighton organisation and

26

1 I believe it still is. It was principally focused on
2 safety and it was a monetary method of trying to change
3 the culture of the people working for us. This will
4 have been administered by the commercial manager, with
5 input typically from the safety manager.

6 Q. Right. So presumably you might get a situation where
7 a supervisor or an inspector reports something to the
8 safety manager, who would then report it to the
9 commercial manager, and a decision would be made whether
10 or not to impose this administrative fee?

11 A. To some extent. Typically, there was a weekly safety
12 walk, and then there was a full report done on that
13 walk, and there was an allocation as to who was
14 responsible, and that would feed into this.

15 Q. Right. So that's a separate walk to the one we were
16 talking about earlier?

17 A. Yes.

18 Q. This was a specific safety walk --

19 A. Yes, a specific safety walk, every week.

20 Q. -- which took place every week?

21 A. Yes.

22 Q. So it would be really out of that walk that this system
23 might kick in?

24 A. Okay, I'll correct myself. Safety and environmental.

25 Q. All right. It's nothing that you got involved in
26

1 specifically?

2 A. I joined that walk routinely.

3 Q. But you didn't get involved in this system?

4 A. This system was almost automatic. Almost automatic.

5 The penalties would be levied based on those reports,
6 and other things as well, and that would go through into
7 the commercial system.

8 Q. All right. Can I ask you, please, to look at
9 paragraphs 18 and 19 of your witness statement. You say
10 there:

11 "I understand that all formal inspections on the
12 diaphragm walls and platform (track) slabs were
13 completed and approved. If an inspection did not take
14 place and the works proceeded without approval,
15 I believe that MTRCL would have raised the issue with us
16 very quickly, either during daily discussions or at the
17 weekly progress meetings with MTR. I have no
18 recollection of such issues being raised by MTR or
19 anyone else.

20 As above, I understand that Leighton obtained MTR's
21 acceptance of the reinforcement works on diaphragm walls
22 and track slabs, and approval to cast concrete. This
23 approval would have been given verbally by MTR's staff
24 on site and confirmed in writing at a later date when
25 the RISC (inspection request) form was returned to

26

1 Leighton."

2 Now, so far as the diaphragm walls are concerned,
3 Mr Rawsthorne, the Commission has seen evidence that as
4 each rebar cage was fabricated by Hung Choi on behalf of
5 Intrafor, and each rebar cage completed, an inspection
6 would take place at the point at which one rebar cage
7 was connected to the next rebar cage; do you understand
8 what I'm talking about?

9 A. Yes.

10 Q. Indeed we have seen documents, and I would like to show
11 you one example: F19/13249.

12 This is just an example, taken at random,
13 Mr Rawsthorne. It happens to relate to EM52. If we
14 could please go to page 13258 -- that's it; thank you
15 very much. Could you go up, please. Stop there.
16 Thanks very much.

17 Mr Rawsthorne, I don't know whether this is the sort
18 of document you've seen before?

19 A. Not recently.

20 Q. What it is is a demonstration of a point I was making
21 a moment ago, that as the various rebar cages are
22 fabricated and connected to the one above, and so on,
23 and so on --

24 A. Mm-hmm.

25 Q. There's an inspection that takes place between MTR,
26

1 Leighton and Intrafor, and it's signed off at each
2 particular connection; do you see?

3 A. Yes.

4 Q. And by and large, whilst there are slight differences in
5 the number of signatures that we have on certain
6 pages -- by and large, that process was operated
7 throughout the course of the diaphragm wall works?

8 A. Yes.

9 Q. And we've got the documents such as the one I've just
10 shown you to demonstrate that.

11 Can I ask you this. We've heard evidence, the
12 Commission has heard evidence already, and of course
13 there's still more evidence to come, and one doesn't
14 quite know how it's all going to pan out at the end of
15 the day, but for the moment the evidence appears to
16 suggest that so far as the rebar is concerned for the
17 platform or the track slabs, at their connections, the
18 rebar connections with the diaphragm wall, inspections
19 would take place by Leighton and MTR on a layer-by-layer
20 basis. Is that your understanding of what should have
21 happened?

22 A. Yes.

23 Q. And so, starting at the bottom, the bottom layer of
24 rebar, you would inspect whichever layer it was, first
25 going from east to west, and then -- that would be, say,
26

1 B5, and then you would inspect the next layer, B4, going
2 in the other direction, and then the other one going in
3 the next direction, until you got to the top, so
4 a layer-by-layer inspection process?

5 A. I think that would be covered under a surveillance
6 rather than a formal inspection, because the formal
7 inspection is typically about the covering-up of the
8 works.

9 Q. Yes.

10 A. When you talk about the rebar cages for the D-wall, the
11 splice, once it's lowered, it's effectively covered.

12 Q. This is what I was trying to get to, and you've brought
13 me to it quite neatly. I was going to ask you whether
14 you think there's a parallel to be drawn between the
15 inspections that take place between the connections for
16 each rebar cage and the inspections that should take
17 place on a layer-by-layer basis, whether there's
18 a parallel, as it were, between those two situations?

19 A. In my personal opinion, I don't think it's a fair
20 parallel, because, as I said, for the splice connection,
21 you have no access back to it.

22 Q. Once it's down, it's down?

23 A. Yes. And for me the fundamental principle is the
24 covering-up of works must be inspected, the work to be
25 covered up must be inspected.

26

- 1 Q. But isn't one of the problems with that approach,
2 Mr Rawsthorne -- let's just again focus on the bottom
3 rebar of the EWL slab, by way of example -- let's
4 suppose you've got five or six layers of rebar, three
5 going one way, three going the other. If you come along
6 and you just inspect once all of those five or six
7 layers are in place, how do you actually properly
8 inspect the lower layers? You can certainly see the top
9 layer, but how do you properly inspect the lower layers?
- 10 A. If it's not accessible, it should be inspected
11 beforehand, yes.
- 12 Q. Also, isn't this a problem, that if on the final
13 inspection you do spot a problem three or four layers
14 down, using a torch or whatever other method you may be
15 using, how on earth do you put it right?
- 16 A. You take the cage apart. You go back and you fix it.
- 17 Q. You'd have to take an awful lot of rebar out if it was
18 three or four layers down, wouldn't you, to get at it?
- 19 A. But that's the process, isn't it? If it's not built
20 correctly, it should be remedied.
- 21 Q. What I'm driving at really, Mr Rawsthorne, is this. Do
22 you think -- sorry, the distinction that you make, and
23 indeed other witnesses make -- and we will looking at
24 them in due course -- is between formal inspections and
25 routine inspections. That's the primary distinction you
26

1 make. As I understand it, you and indeed others take
2 the view that the layer-by-layer inspection of the rebar
3 is routine rather than formal?

4 A. It would appear to be, yes. I don't have access to the
5 actual inspection and test plan for that, so I'm not
6 sure what the formal agreed process was.

7 Q. Right.

8 CHAIRMAN: Sorry, so that I can understand this in a much
9 more layman's way, taking laying down of the rebars, the
10 bottom layer, shall we say -- so there's nothing beneath
11 it, other than earth or concrete or whatever else is
12 there, you are just laying this down now. There would
13 be a routine inspection of that, which would mean that
14 from time to time the inspector or supervisor would walk
15 along there and check individual couplings, or he might
16 watch one or two rebar fixing into the couplers, but
17 there would not be a specific stand-over while each one
18 was threaded in?

19 A. No, I don't think so, no.

20 CHAIRMAN: So it would be a question of some sort of routine
21 of going up and down and looking and periodically
22 checking?

23 A. That's what I imagine.

24 CHAIRMAN: Then, once all that was done, before moving to
25 the next layer, would anything happen, or would you wait

26

1 until all the layers were finished and then do a formal
2 inspection?

3 A. I don't know exactly the sequence of those inspections.
4 There must be a final inspection, and inside that final
5 inspection whether there's been an informal check at
6 each level, without an actual document follow-up,
7 I don't know.

8 CHAIRMAN: All right.

9 MR PENNICOTT: That was really -- again, you've anticipated
10 the point, that with the rebar cages, as we've seen, in
11 the diaphragm wall, we have the documents that show
12 "Inspected by Intrafor, Leighton, MTR".

13 A. Yes.

14 Q. But insofar as inspections took place of the connections
15 of the rebar to the diaphragm wall, insofar as it took
16 place on a layer-by-layer basis, we have no documents?

17 A. Yes.

18 COMMISSIONER HANSFORD: Can I just ask a question here.

19 So you have bottom mat of reinforcement which is
20 several layers, you've got a top mat of reinforcement
21 that's several layers. We know that the formal
22 inspection for the RISC form was done after both were in
23 place before concrete -- there was a hold point before
24 concrete could proceed.

25 A. Yes.

26

1 COMMISSIONER HANSFORD: At that formal inspection, is it
2 possible to get access inside? Because you've got a top
3 mat and a bottom mat. Did the inspection actually go
4 inside the cage or did it just look from the top; do you
5 know?

6 A. I couldn't say categorically that I know, but actually
7 it should have been; it should certainly have been to go
8 inside the cage.

9 COMMISSIONER HANSFORD: So it would be physically possible
10 to get inside -- because it's a 3 metre slab with a top
11 mat and a bottom mat, so there's a lot of room in
12 between.

13 A. Yes.

14 COMMISSIONER HANSFORD: So the physical inspection for the
15 formal inspection could also -- and we will find out
16 from others whether it did -- include going inside the
17 cage?

18 A. In my opinion, it should do, because you've got to do
19 a general cleanliness inspection anyway, don't you?

20 COMMISSIONER HANSFORD: Thank you. That's quite
21 an important point that I'm not sure everybody in this
22 room had quite appreciated. Thank you.

23 MR PENNICOTT: Thank you, Mr Rawsthorne, for that. I think
24 I've taken that as far as I can.

25 NCR157, perhaps we can take a look at that.

26

1 C12/8134, please. This is a document that we've looked
2 at a number of times and no doubt this won't be the
3 last, NCR157. You mention this in your witness
4 statement.

5 A. Yes.

6 Q. I think broadly you say you have no specific
7 recollection of it; would that be right?

8 A. This is the truth, yes.

9 Q. But that, nonetheless, it obviously bears your
10 signature?

11 A. It does.

12 Q. Is that because every NCR that goes to a sub-contractor
13 must be signed by the project manager?

14 A. No.

15 Q. Why is this particular one signed by you?

16 A. Absolutely I don't know. I can suggest that perhaps
17 Mr Plummer was not available at the time.

18 Q. Right. So it could be signed by the project director or
19 the project manager. Are those the only two people
20 allowed to, as it were, under some sort of protocol,
21 sign NCRs?

22 A. I don't believe there would have been a problem with the
23 construction manager issuing that.

24 Q. All right.

25 Now, we know -- sorry, let me just ask you this.

26

1 This document, the NCR, with its attachments and so
2 forth, was sent to Fang Sheung?

3 A. Yes.

4 Q. To Joe Cheung at Fang Sheung?

5 A. Yes.

6 Q. It says on its face that it was sent by mail. Does that
7 mean by post as opposed to email?

8 A. Honestly, I don't know.

9 Q. You don't know. The only reason I ask that is that
10 we've seen various -- this document is in various places
11 in our bundles. Sometimes there's the sheet that
12 Mr Plummer has signed, because it's going to be MTR, and
13 sometimes that sheet is not there, and so forth, but
14 don't worry about that. Nowhere, however, do we find
15 an acknowledgement, a signed acknowledgement, that
16 Fang Sheung have actually received this.

17 Is there a process by which they ought to have
18 acknowledged this and so that you were satisfied that
19 they knew about it, and so forth?

20 A. There is the process, because the form has it. Was it
21 followed in this case? I'm sorry, I don't know.

22 Q. Okay. All right.

23 Now, we know -- we can look at it if we need to, but
24 let me just tell you -- that on 15 September 2015, when
25 this problem with the rebar was discovered -- sorry, did
26

1 I say September? 15 December -- what happened was Kobe
2 Wong from MTRC --

3 A. Yes.

4 Q. -- sent an email with some photographs to a number of
5 people at Leighton. There was no express -- first of
6 all, there was no NCR issued by MTR to Leighton in
7 relation to this, and there was no express request or
8 instruction by MTR that you, Leighton, should issue
9 an NCR to the sub-contractor concerned.

10 So can you help us with the decision-making process
11 that took place within Leighton that gave rise to this
12 NCR being issued to Fang Sheung?

13 A. I can suggest but --

14 Q. Let me ask you a more direct question: were you involved
15 in that decision-making process?

16 A. Not that I recall, no.

17 Q. Perhaps you could then suggest how it might have
18 happened.

19 A. I believe the email that you're mentioning was sent to
20 our quality manager, amongst others, and I believe he's
21 reviewed it that this has to be sent to the
22 sub-contractor. That's what I guess has happened.

23 Q. Is that Mr Harman?

24 A. Harman, yes.

25 Q. Okay. So that would have been his ultimate call on
26

1 this, to your understanding?

2 A. To initiate it. I don't think there's a limitation on
3 who could initiate the NCR. If it got to myself or
4 Malcolm and we didn't think it was the right document,
5 it might get stopped, but in terms of initiation,
6 I don't see any problem in the world, certainly with the
7 quality manager raising it, certainly not.

8 Q. We've seen something, a document called guideline 121.
9 I don't know if that's something you're familiar with?

10 A. No.

11 Q. It's referred to at the bottom of the NCR, on one of the
12 sheets here, and what it is -- let me show you
13 the document.

14 It's at C35. Thank you. It's a document called
15 "Non-conformance report classification", Mr Rawsthorne;
16 do you see that?

17 A. Yes.

18 Q. Is that a document you've seen before?

19 A. Possibly.

20 Q. What it does, it has its purpose, its classification
21 methods, causes of defective work, and if you scroll --
22 keep going, please, it gives some -- pause there -- main
23 causes, subsidiary causes; it gives some examples. It's
24 basically, broadly speaking, telling you how to fill in
25 the non-conformance report, how to classify what's

26

1 happened; do you see?

2 A. Yes.

3 Q. What it doesn't appear to do, Mr Rawsthorne, is give you
4 guidance as to when, in what circumstances, an NCR
5 should be issued to a sub-contractor. Are you aware of
6 any criteria --

7 A. Any documented criteria? No.

8 Q. -- that help us? No?

9 A. There may well be. Within the Leighton quality system,
10 there may well be, but I'm not aware.

11 Q. All right.

12 COMMISSIONER HANSFORD: Sorry, can I ask, did you regard
13 NCRs as different to warning letters? So if an NCR was
14 issued to a sub-contractor, is that a different issue
15 than a warning letter being issued to a sub-contractor?

16 A. To me, an NCR is typically -- I would expect it to be
17 a quality issue.

18 COMMISSIONER HANSFORD: All right.

19 A. A warning letter, in my knowledge of the Leighton
20 culture, I would expect more to be a safety issue.

21 COMMISSIONER HANSFORD: Okay.?

22 A. That would be my expectation, but I don't have
23 a document that says that's the case.

24 COMMISSIONER HANSFORD: No. That's useful. Thank you.

25 MR PENNICOTT: Mr Rawsthorne, so far as you can recall, is
26

1 there some sort of close-out procedure in relation to
2 these non-conformance reports?

3 A. Yes, there is.

4 Q. Do you know how that's supposed to work?

5 A. In detail, no.

6 Q. Okay. We can ask somebody else.

7 Mr Rawsthorne, I don't know whether you are aware of
8 this, but in January 2017, Mr Zervaas instigated
9 an internal review and investigation of allegations that
10 had been made by Mr Jason Poon of China Technology.

11 A. Yes, I'm aware.

12 Q. Instigated a review, investigation by Mr Stephen Lumb.

13 Mr Lumb, we know, carried out that review and
14 investigation, interviewed a number of staff/personnel
15 from Leighton and produced a report.

16 Were you interviewed as part of that process,
17 Mr Rawsthorne?

18 A. No.

19 Q. You were not? Okay. Did you have an opportunity of
20 seeing his report, when he produced it?

21 A. I'm actually not sure. I can't remember. I may well
22 have. I may well have.

23 Q. Okay. In any event, you weren't involved in -- weren't
24 interviewed and weren't involved in its preparation?

25 A. No, I was not. Or, excuse me, I do believe almost
26

1 certainly I will have seen it, to be honest.

2 MR PENNICOTT: All right. Mr Rawsthorne, that's all I have
3 for you.

4 Perhaps, sir, that would be a convenient moment to
5 have 15 minutes.

6 CHAIRMAN: Yes. Thank you. 15 minutes.

7 (11.36 am)

8 (A short adjournment)

9 (11.55 am)

10 Cross-examination by MR SO

11 MR SO: Good morning, Mr Rawsthorne. I am Simon So. I am
12 counsel for China Technology.

13 A. Good morning.

14 Q. Mr Rawsthorne, I have some questions for you. You
15 recall that my learned friend Mr Pennicott, counsel for
16 the Commission, mentioned to you that there were some
17 cage-by-cage inspections for the diaphragm wall; do you
18 recall that?

19 A. Yes.

20 Q. Are you aware of the fact that on quite a lot of
21 occasions, those cage-by-cage inspection forms were not
22 signed by all three of the parties?

23 MR WILKEN: Sir, this was objected to when the question was
24 put in that form to Intrafor's witnesses, because it is
25 so vague and so nebulous that it's almost impossible for
26

1 any witness to answer it. So I repeat that objection,
2 which I believe everyone agreed with last time.

3 CHAIRMAN: Yes.

4 MR SO: All right. Fair enough.

5 Mr Rawsthorne, when you were answering the good
6 professor's questions as to whether there would be
7 inspections for the layer-by-layer bars, do you recall
8 that you said the inspectorate officers would go down to
9 the area between the upper layer and the bottom layer to
10 inspect those?

11 CHAIRMAN: No, I don't think he did. I think Prof Hansford
12 put it to him that there was this void area, and my
13 understanding was that Mr Rawsthorne said he would
14 imagine it would be the case.

15 MR PENNICOTT: That it would be feasible or possible.

16 COMMISSIONER HANSFORD: Perhaps I can say what I thought
17 I asked. I asked whether it would be possible to
18 inspect inside the cage.

19 MR SO: All right. I wish to clarify that part, that bit.

20 Mr Rawsthorne, can I take you to some photographs.
21 It is in bundle E5, page E1290.

22 Mr Rawsthorne, were you at any time present in the
23 inspections, joint inspections, with the MTRC and the
24 foreman of Fang Sheung in inspecting those
25 layer-by-layer fixing of the rebars?

26

1 A. No.

2 Q. Do you know that the bars between the upper layer and
3 the bottom layer were actually supported by something
4 called a "sifu" bar, do you know that, or the spacer
5 bar?

6 A. The chairs, yes.

7 Q. We can also see some spacer bars now placed vertically
8 and horizontally on top of the bottom layer of the layer
9 bars; is that correct?

10 A. Yes.

11 Q. Can I take you to another photograph. That would be
12 E1316. Here we see there are two layers of the bars and
13 there were some formworks being already annexed to the
14 two layers; correct?

15 A. We are talking about the two rows of couplers there;
16 yes?

17 Q. Yes.

18 A. Okay, yes.

19 Q. And the area between the two layers were actually
20 slightly on the left-hand side of the photograph; is
21 that correct?

22 A. I can see what you're talking about, yes.

23 Q. Can I suggest to you that the fact is, actually, it
24 would not be possible to go in between the two layers of
25 the bars, because otherwise the "sifu" bars would
26

1 collapse and the person inspecting would be in danger?

2 A. This is not a 3 metre slab that we're looking at in this
3 photograph. This is a different arrangement. I believe
4 the question was about the 3 metre slab where you have
5 the top mat and the bottom mat and the void in between.

6 COMMISSIONER HANSFORD: My question was about the 3 metre
7 slab, that's correct.

8 MR SO: I understand that. But I am asking Mr Rawsthorne
9 would it be in a similar arrangement like the 3 metre
10 bar as shown in this photograph --

11 MR PENNICOTT: Mr Rawsthorne has said this is not the
12 3 metre slab. Perhaps the person asking the question
13 should identify what it is. If it's not a 3 metre slab,
14 if it's something different; the situation is obviously
15 different.

16 MR SO: Perhaps I will just focus on the first photograph
17 that I have shown, the E1290 photograph, please.

18 This is the 3 metre slab; correct?

19 A. It would appear to be, yes.

20 Q. And it would be supported by the "sifu" bars placed
21 horizontal and placed vertical to support the two
22 layers?

23 A. Mm-hmm.

24 Q. And the persons going in, I suggest to you, would be
25 unable to check the bottom layer because it would touch

26

1 and it would move the "sifu" bars when they are
2 inspecting it?

3 CHAIRMAN: But by then -- sorry, it's my question, not
4 a statement -- the "sifu" bars which are there to ensure
5 spacing, their structural need would have been made
6 lesser, would it not, by the fact that all these rebars
7 are connected to each other and are inserted into the
8 side walls and stuff like that?

9 A. What I think I tried to explain before is typically you
10 would go into a void like that because you have
11 reinforcement, you have general cleaning, before you
12 cast the concrete. Typically, your inspection would go
13 inside to make sure there was no debris, no timber
14 offcuts; all the unsuitable materials should be removed
15 before you cast the concrete.

16 CHAIRMAN: Yes.

17 A. So typically you would leave an opening in the top, put
18 an access down -- it's very, very uncomfortable work but
19 that's what I would expect to happen.

20 CHAIRMAN: That's a different story, yes.

21 MR SO: I think I have put my position clear. My position
22 is that it did not occur. Would you accept that?

23 A. I don't actually know, but I don't accept that it didn't
24 occur because I believe it should have.

25 Q. Thank you. I just want to show you a last photo: E1324.

26

1 I would suggest that the inspection would take place
2 exactly like what you see now, just inspection of the
3 upper layer of those bars. I understand that you would
4 not accept that; correct?

5 CHAIRMAN: Again, my apologies, I really don't wish to sound
6 obstructive, but I don't think that Mr Rawsthorne has
7 said that he actually took part in any of the
8 inspections.

9 MR SO: I see.

10 CHAIRMAN: So it would be a case of him, I suppose -- well,
11 in that instance, all he can say is "I don't know."

12 MR SO: Thank you. I will move on.

13 CHAIRMAN: Sorry. I hope I haven't put words in your mouth.

14 WITNESS: That's fine.

15 MR SO: Mr Rawsthorne, may I bring you to -- I don't quite
16 know the bundle number, I do apologise -- it is C7057,
17 or perhaps C7056, please.

18 MR PENNICOTT: C10.

19 MR SO: Mr Rawsthorne, this is the NCR that you said you
20 have signed, the NCR157 to Fang Sheung; right?

21 COMMISSIONER HANSFORD: Not this page.

22 A. Yes.

23 MR SO: So we see from -- this was dated on 18 December.

24 You said in your witness statement that it was signed on
25 the 17th. Is it? Can you just clarify whether it was
26

1 signed on the 17th or 18th?

2 A. I believe -- I retract. I don't have a specific
3 recollection of signing this. I believe in the witness
4 statement I've got a typo in there. I think it should
5 have said 18. Sorry.

6 Q. So it was signed on the 18th?

7 A. That's the only evidence I have, yes.

8 Q. Thank you. Did you give a read to this NCR when you
9 were signing it?

10 A. As I said, I don't actually have a recollection of doing
11 it. I truly don't.

12 Q. Who actually gave this NCR form for you to sign?

13 A. Again, I don't truly know, but I expect it was Kevin
14 Harman.

15 Q. Did Mr Harman tell you what was the issue arising, that
16 gave rise to this NCR, or you can't recall?

17 A. I truly can't recall, sorry.

18 Q. So you can't recall that he told you anything that was
19 so shocking or that you can remember?

20 A. Not that I recall, no.

21 Q. Can I take you to the next page, 7058. We see that it
22 is blank. Did you read through this document before you
23 signed it? You didn't?

24 A. Again, I don't have a recollection of the document.

25 Q. Can I bring you to page C7063. You then copy this NCR
26

1 to MTR, and we see a signature that you signed PP for
2 Malcolm Plummer. Is that your signature?

3 A. Yes.

4 Q. We can take it to 7065 and 7066. That is the same
5 document that you saw that it was copied to Fang Sheung;
6 correct?

7 A. I think there's two documents. One is, if you like, the
8 domestic NCR to Fang Sheung, and there's the MTR NCR
9 that's been sent to MTR.

10 Q. But the content of the NCR was the same?

11 A. Yes.

12 Q. Did you make any follow-up as to how this NCR was
13 eventually tackled or whether closed out?

14 A. At that point in time, I don't truly have a recollection
15 of this. Subsequently, I've come to understand that the
16 non-conformance here was rectified immediately.
17 Subsequently I've come to understand that.

18 Q. Subsequently?

19 A. Yes.

20 Q. Can you recall how long was that after you signed the
21 NCR? A month? Two months?

22 A. Ah, no. If I go back again, I don't have a recollection
23 at the time of this document, so the question is
24 difficult for me to answer. I became aware of this
25 document in recent months. In becoming aware of it,

26

1 I became aware of the circumstance, and the fact that it
2 had been addressed at the time.

3 Q. When the NCR was actually rectified, is it the procedure
4 that you would be also requested to sign something to
5 approve that it was rectified?

6 A. No, I don't think so. I don't think that would be
7 necessary.

8 Q. I see.

9 Can I bring you to another document, B4121. This is
10 again the NCR but this time it is in the MTR's bundle.
11 You confirm that that is the same NCR that you signed,
12 right, B4121 and B4122; correct?

13 A. Excuse me?

14 Q. B4121 and page B4122 is the NCR that you have signed,
15 the same document, basically?

16 A. It appears to be, yes.

17 CHAIRMAN: I think you can just put it to him that it is.

18 MR SO: Right.

19 Can I bring you to B4127.

20 Can this be blown up?

21 There was a signature next to the project manager's
22 approval; correct?

23 A. Yes.

24 Q. Was that your signature?

25 A. Yes, it is.

26

1 Q. Did you sign on 15 December 2015?

2 A. That's what the document says.

3 Q. Do you recall you were given to sign this after the
4 rectification?

5 A. I can't see the document.

6 Q. How can we assist you?

7 A. I can't see -- I don't know what the document is.

8 Q. That's the NCR.

9 A. It's the first time I've seen this document. I have
10 signed it previously but it's the first time in three
11 years that I've seen this document, so I don't have
12 a recollection of it.

13 Q. When you were signing it, do you recall anything was
14 scribbled on the top or it was just a blank form?

15 A. No idea.

16 CHAIRMAN: I think Mr Rawsthorne is saying, "Sorry, three
17 years, I just have no recollection of this document."
18 If there's something really important that might jog his
19 memory, that's a different matter, obviously.

20 COMMISSIONER HANSFORD: I think he's about to be shown
21 a hard copy.

22 CHAIRMAN: Okay.

23 MR SO: Mr Rawsthorne, I think the question that you can
24 assist us is why this document was signed on
25 15 December, but when it was sent on 18 December to
26

1 Fang Sheung and MTR, this written manuscript was not
2 there?

3 A. I don't know.

4 Q. Can I suggest to you that this document was actually
5 made retrospectively?

6 MR WILKEN: Sir, there is no positive case from my learned
7 friend's client as to this effect.

8 MR PENNICOTT: I think, with respect, Mr Wilken needs to be
9 a bit careful, because I'm aware of this point but
10 I didn't think that it was appropriate to put the point
11 to Mr Rawsthorne. It's quite clear -- and Mr So is
12 right -- that from the documents we've seen so far, the
13 box where it says "Details of required rectification",
14 and then the three or four lines of manuscript which we
15 know were signed by Andy Ip, a Leightons witness that's
16 coming along shortly -- when the document was issued to
17 Fang Sheung and when the document was forwarded to MTR,
18 those words were not there. That's clear, from what
19 we've seen.

20 I also suspect that those words, and if you look at
21 the bottom of the page you get some more manuscript, you
22 get Mr Harman's signature, you get the date of
23 16 January 2017 -- so that's when, clearly, Mr Harman
24 signed it, some 14 months after the date of the original
25 NCR. Something happened subsequently. I don't know yet

26

1 what happened but I'm going to try to find out, but
2 I have to say -- I'm not suggesting that Mr So is not
3 entitled to ask the question, but there are some issues
4 that arise over this document, as to precisely when some
5 of this was filled in, because clearly, if the evidence
6 is correct about what happened on 18 December, then
7 there's something slightly curious about this document
8 that needs explaining.

9 I know what my theory is but I'm not going to
10 suggest what it is at the moment.

11 MR WILKEN: Sir, to be clear, we have no objection to
12 counsel to the Commission exploring this line, but it is
13 somewhat difficult for Mr So, under the terms of his
14 Salmon letter, to pursue this line. That's the point
15 we're taking.

16 So we have no objection to Mr Pennicott, but it
17 is -- from an interested party it becomes a little
18 convoluted, if we may put it that way.

19 CHAIRMAN: Yes, I see the point.

20 MR SO: Sir, we are just trying to make the point, and
21 obviously, as this Commission would appreciate, my
22 client has, with respect, a lot to say on what -- a lot
23 that he wishes to say in this matter. I am under such
24 instruction that I'm bound to do something that --

25 CHAIRMAN: No, no, that's -- I think what Mr Rawsthorne is

26

1 saying now, and this is why I wonder if we can progress
2 it with this witness in any meaningful way, is, "I don't
3 actually have any memory of this document. I would have
4 dealt with it several years ago, in my normal routine of
5 a busy day, and even looking at it now does not help me
6 to recall exactly when I signed on that document in the
7 two different places."

8 A. I have no recollection of this document.

9 CHAIRMAN: But you recognise your signature on the document?

10 A. Definitely.

11 CHAIRMAN: And you can take it no further than that?

12 A. Yes.

13 MR SO: Just one last point on this before I move on to the
14 next topic, sir.

15 CHAIRMAN: Yes.

16 MR SO: So, Mr Rawsthorne, is the date scribbled by you or
17 is the date not scribbled by you, next to your
18 signature?

19 A. The handwritten date, I don't believe that's my
20 handwriting.

21 Q. That's not your handwriting?

22 A. I don't believe so.

23 MR SO: I will leave the point there.

24 MR PENNICOTT: Mr So can rest assured that this will be pursued
25 with other witnesses.

26

1 CHAIRMAN: Yes. We haven't simply abandoned the point, or,
2 rather, counsel for the Commission hasn't abandoned the
3 point.

4 MR SO: Thank you.

5 Mr Rawsthorne, during your site inspection, the
6 weekly site walk that you had on site, have you heard of
7 any of your colleagues from Leighton or MTR talked about
8 this NCR?

9 A. Not that I recall, no.

10 MR SO: Thank you. No further questions.

11 CHAIRMAN: Okay.

12 Cross-examination by MR KHAW

13 MR KHAW: Mr Rawsthorne, good afternoon. Just one matter of
14 terminology that I wish to clarify with you first.

15 You, as project manager, were in charge of the
16 construction engineering team. Because I can see from
17 your witness statement that this term, "construction
18 engineering team", appears, and also "engineering
19 construction team" appears as well. So can I just
20 clarify with you that they are actually referring to one
21 team?

22 A. Yes.

23 Q. Thank you. There was another team called site
24 supervision team?

25 A. Yes.

26

1 Q. You also explained to us how the two teams actually
2 complement each other?

3 A. Yes.

4 Q. If I can just take you to have a look very briefly at
5 one paragraph of your witness statement. That is
6 paragraph 14, C27/20693.

7 I just try to understand a bit more about the
8 division of labour insofar as the two teams are
9 concerned. By the way, I'm acting for the government,
10 just for reference.

11 Paragraph 14:

12 "The construction engineering team performed
13 a different but complimentary ..."

14 I believe that should be not really complimentary in
15 the sense that there was no payment.

16 CHAIRMAN: I think "complementary".

17 MR KHAW: "Complementary", C-O-M-P-L-E-M-E-N-T-A-R-Y.

18 "... role to Leighton's site supervision team. In
19 summary, the engineering construction team was
20 responsible for the technical, planning and quality
21 assurance aspects of the works while the site
22 supervision team was responsible for the safe on-site
23 construction of the works."

24 I don't quite understand the division of labour
25 here. Can you describe a bit more regarding the

26

1 different responsibilities taken by the two teams?

2 A. In terms of the site supervision team, their role was
3 the actual physical delivery of the work, to ensure that
4 the work was done in a safe and reasonable manner. The
5 construction engineering team, their role was to ensure
6 that all of the technical issues were resolved, to
7 produce a planning that enabled the works to be built in
8 the time frame required. That's the simple ...

9 Q. But I take it that both teams were responsible for
10 quality issues; is that right?

11 A. Finally, yes. Finally, yes.

12 Q. So in terms of supervision and inspection of the works
13 done in a particular aspect, how would they cooperate
14 with each other, the two teams?

15 A. The supervision team would manage the sub-contract or
16 the labour resource, the plant resource, to get the work
17 to the next stage, following the plan that was set by
18 the construction engineering team, the concept. Once it
19 was at that stage, the inspection to ensure that it had
20 been done correctly and as was required by the drawings
21 and the specification, that inspection would be done by
22 the construction engineering people.

23 Q. I see.

24 A. Okay?

25 COMMISSIONER HANSFORD: I was struggling with this point

26

1 earlier as well, but I think I'm there. So the
2 supervision team is responsible for ensuring that the
3 works are done and that they're done safely?

4 A. Yes.

5 COMMISSIONER HANSFORD: And the construction engineering
6 team is responsible for ensuring the works are done
7 correctly? I don't want to put words into your mouth,
8 but is that -- perhaps that's not quite the right way of
9 describing it.

10 A. In simple terms, I would agree with that. For the
11 construction engineering team, their responsibility goes
12 more into preconstruction, into the planning and making
13 sure that the materials, et cetera, are procured, so
14 that's part of their role. Also the liaison with the
15 client, with the MTR, to make sure that we're working in
16 the same direction. That's their role in the thing.

17 The supervision team are, okay, it's all arranged,
18 it's all sorted out, their job is now to deliver it, to
19 get it built, and then finally the construction
20 engineering team will come back again and ensure that
21 it's been done properly.

22 COMMISSIONER HANSFORD: Right. Thank you.

23 MR KHAW: Is it a fair way to put it, Mr Rawsthorne, just
24 taking from what you told us, the site supervision team
25 would be slightly more concerned with the programming of
26

1 the work, catching up of the work in accordance with the
2 plans, whereas the engineering team would be more
3 concerned with the actual quality issues?

4 A. I wouldn't differentiate between the two teams for that,
5 no.

6 Q. Thank you. Just to understand a bit more regarding your
7 duties as the project manager. If I can just take you
8 to have a look at B6/3982. I don't propose to read out
9 paragraph 3.2.3.2, under the heading of "Project
10 manager", but this is the quality assurance plan of both
11 MTR and Leighton.

12 I can just take you to 3.2.3.2. If you can take
13 a look at the description of your duties and
14 responsibilities and see whether you agree with the
15 contents.

16 A. It's the document. I cannot not agree.

17 Q. You can see that at page 3983, the third-last bullet
18 point, "approving the required actions associated with
19 non-conformance reports and corrective action
20 requests" -- so you agree that insofar as
21 non-conformance is concerned, whenever there is
22 a non-conformance report, your duty is to approve the
23 required actions, required remedial actions?

24 A. That's what the document says there, yes.

25 Q. In fact that is the reason why you need to put your
26

1 signature down on an NCR when you are asked to approve
2 the contents of the NCR; would that be correct?

3 A. Possibly correct. Possibly correct. I don't know.

4 Q. Thank you.

5 But then if we go to the part regarding construction
6 manager, at 3985, these are the construction managers
7 working in the construction engineering team and who are
8 supposed to report to you; right?

9 A. Yes.

10 Q. According to the description here, there is no
11 particular provision requiring the construction manager
12 to do anything in relation to NCR; would you agree?

13 A. It appears to be the case. I am not familiar with this
14 document. I may have been once.

15 Q. But the practice is that whenever an NCR is prepared, it
16 is the staff of the construction engineering team who
17 would prepare the NCR and then ask you to approve; is
18 that correct?

19 A. Yes, that's ...

20 Q. Thank you.

21 Just one last page I wish to take you to have
22 a look: 4006. Under 7.4, under the heading of
23 "Reporting", under 7.4.2.1, can you see "Internal
24 quality reports"?

25 A. I can.

26

1 Q. Here it says:

2 "A monthly quality report will be compiled by the
3 quality and environmental manager and approved by the
4 project director. That report will be prepared on
5 standard form ... and include the following information:

6 -- status of quality-related [issues] ..."

7 Then the next page:

8 "-- status of quality implementation and document
9 preparation ...;

10 -- status of all non-conformances and corrective
11 actions ..."

12 So am I correct to say that if there are NCRs or
13 when NCR incidents are discovered, there would be this
14 monthly quality report which will record those
15 incidents?

16 A. To be honest, this document is far removed from my
17 recent recollection. So to answer you properly, I would
18 need to go through it and I would actually need to
19 discuss it with the quality manager to find out if
20 there's been any amendments or what have you; yes?

21 Q. Yes. I see. So, according to your recollection, you
22 have never seen this monthly quality report?

23 A. My recollection -- definitively, I couldn't say, "Yes,
24 I have", but there was a monthly head office quality
25 review which I didn't attend, the project director

26

1 attended, and I assume that there was a report that went
2 into that.

3 Q. Mr Rawsthorne, would you agree that, just generally
4 speaking, an NCR is an important document insofar as the
5 project is concerned?

6 A. Yes.

7 Q. Obviously, one of the reasons for issuing an NCR is to
8 inform the relevant sub-contractor of the defects found?

9 A. Yes.

10 Q. At the same time, you agree with me that the NCR would
11 also be forwarded to MTR, in order to also inform them
12 what happened?

13 A. That was our process, yes.

14 Q. Would you also agree that as a matter of common sense,
15 one main purpose of the NCR was to try to identify the
16 actual cause of the problem?

17 A. Should be, yes.

18 Q. Identification of the actual cause of the problem will
19 provide you, or Leighton, with an indication as to
20 whether the problem identified is an isolated incident
21 or it is a prevalent -- or there is a prevalent,
22 widespread malpractice?

23 A. Sorry, can you say that again, please?

24 Q. Would you agree that identification of the actual cause
25 of a particular non-conformance incident would provide
26

1 Leighton with at least an indication as to whether the
2 problem identified is an isolated incident or it shows
3 a widespread or prevalent malpractice; would you agree?

4 A. I can't follow the link. I don't actually agree with
5 what you said, no.

6 Q. For example, the cutting of rebars found and stated in
7 the NCR.

8 A. Mm-hmm.

9 Q. Obviously, one would be interested to know whether the
10 cutting of rebars was in fact an isolated incident or in
11 fact there was quite a widespread malpractice of this
12 cutting happening on the site; would you agree?

13 A. Yes.

14 Q. So identification of the actual cause of a problem, ie
15 why did the workers do this cutting act, would enable
16 you to understand a bit more as to whether this was
17 an isolated incident or it was a widespread problem?
18 Just a matter of common sense; would you agree?

19 A. The NCR, as I understand it, identifies causes, and
20 I think it identifies workmanship and personnel issues;
21 yes?

22 Q. Yes.

23 A. To follow your logic, for me, it would be a case of
24 repeated recordings of NCRs. That to me would take me
25 where I think you're trying to go.

26

1 Q. Yes. In fact you anticipated my next, final question,
2 and that is if we can take a look at the non-conformance
3 report classification, not the report itself but the
4 classification that was provided by Leighton yesterday.
5 C35/26663.

6 Here, if we can go to paragraph 2, we can see
7 "Causes of defective work", an interesting diagram
8 there, and we can see there are two causes classified.
9 One is called "main cause", you can see from
10 paragraph 2, "main cause", and "subsidiary cause" of
11 non-conformance. So main and subsidiary; okay? Then:

12 "This classification provides the opportunity for
13 further analysis both at project and company level.

14 The main cause indicates the broad area of the
15 quality problem identified. The subsidiary cause
16 focuses on the likely reasons for the defect occurring."

17 It's all very philosophical.

18 If you can go to the next page, there's
19 a classification which helps you to actually identify
20 what is a main cause, what is a subsidiary cause. Now,
21 subsidiary cause -- a main cause first: survey,
22 documentation, workmanship, material handling,
23 manufacture, identification, design, other. Subsidiary
24 cause: personnel -- now, personnel includes quite
25 a broad area: inadequate skills, knowledge, supervision,
26

1 coordination, workforce.

2 But if we can then take a look at the illustration,
3 ie the examples given, you can see -- take a look at the
4 first example, "Defective work description":

5 "During a concrete post-pour inspection, a deformed
6 window opening was found in the concrete wall. Vertical
7 props were found to be loose and had not been properly
8 fixed on the formwork."

9 Then one can infer from this incident that the main
10 cause should be workmanship, subsidiary cause should be
11 personnel.

12 So, basically, this classification tells your staff
13 actually how to broadly identify the main cause and
14 subsidiary cause; right?

15 A. Okay.

16 Q. But the main cause and subsidiary cause could be
17 actually inferred, according to this classification,
18 could simply be inferred from the problems identified.
19 For example, here it says if this is a deformed window
20 opening, then obviously you can categorise it as
21 workmanship, and obviously it involves some personnel
22 issues, so the main cause and subsidiary cause could be
23 identified; as simple as that, right?

24 A. Yes.

25 Q. But here the main cause or classification of main cause
26

1 and subsidiary cause could not actually tell people what
2 was the actual reason for a particular problem; would
3 you agree? Because you still have to do further
4 investigation in order to find out why this happened; do
5 you agree?

6 A. In this particular case, you've got a workmanship issue.

7 Q. Yes.

8 A. And I think the subsidiary identification is personnel.
9 I think that sits within the ...

10 Q. Yes. In fact, in any case where defects were found, one
11 could immediately categorise it as a workmanship issue;
12 would you agree?

13 A. Not in every case, but more often than not, yes.

14 Q. If we can now take a look at the NCR itself. I'll
15 probably use the NCR as referred to in your witness
16 statement, C27/20395.

17 I understand you were not privy to the preparation
18 of this document, but I will just ask a few questions
19 arising from the contents to see what you think would be
20 the case.

21 A. This document is what, sorry?

22 MR PENNICOTT: We haven't got it yet.

23 MR KHAW: The NCR. C27/20359. Sorry, I got the number
24 wrong.

25 Here we can see, from the "Details of defective
26

1 work", "Threaded rebars ...", blah, blah, blah, we have
2 seen that many times, "Y40 at bottom layer which were
3 wire cut and hadn't screwed into couplers face ..."

4 From this mere description of defective work, I'm
5 sure that by applying the classification one can
6 immediately classify that as a workmanship issue as the
7 main cause, and obviously you also classify the
8 subsidiary issue, subsidiary cause, as personnel. So
9 this is standard; okay?

10 But when you were issuing this document to
11 Fang Sheung, at the page in front of this page, 20358 --
12 you see the box here says "No. of copies" and then
13 "Document No.", the NCR. This is to Fang Sheung.

14 Then you see the box "Instruction"; do you see that?
15 We can blow it up a little bit:

16 "Please review the evidence and investigate the root
17 cause of the problem then propose your corrective
18 actions with a timetable implementation."

19 So there you are trying to coordinate with the
20 sub-contractor and asking them to try to investigate and
21 find out the root cause of the problem?

22 A. Yes.

23 Q. So that would be the usual practice; right? So raw
24 classifications in the NCR form first, and then, when
25 you send the NCR form to the relevant sub-contractor,

26

1 you will be asking them to find out the root cause of
2 the problem; is that the usual practice?

3 A. That is what's there, yes.

4 Q. 20359, ie the next page that we have just seen, we can
5 see your name appears in the box starting with the words
6 "Project manager's approval", et cetera.

7 What was to be approved by you?

8 A. I would need to take advice from the quality manager.
9 I believe that would be an approval that the issue was
10 closed. I believe, but I would need to take advice.

11 Q. No. I believe, when this NCR was issued, the issue
12 obviously had not been closed, or to use your
13 terminology closed out, because you were later
14 identified by a particular close-out date; do you
15 remember that?

16 A. Okay. Yes. I don't know.

17 Q. Let's just try to take it step by step. You received
18 this piece of paper from your team, your team prepared
19 the contents, and then you need to put your signature on
20 it; right? And then the box particularly says,
21 "Approved by project manager".

22 What I'm interested to know is what was supposed to
23 be approved; can you tell us?

24 A. I would actually need to look at it in a little more
25 detail. I'm guessing -- honestly, I'm guessing -- it

26

1 may be approval to issue.

2 Q. So am I correct to say that, first of all, you would
3 need to approve the contents of this NCR; right? This
4 is fairly basic. So you would be relying on the
5 information provided by your team in order to come to
6 a conclusion whether what they stated was correct or
7 not?

8 A. Yes.

9 Q. Would you do any independent verification to check
10 whether the description was correct, whether it is
11 really five number of threaded rebars instead of six,
12 any verification that you would make before you put your
13 signature on this piece of paper?

14 A. In this particular case, I don't have a recollection, as
15 I've said before. Typically, what I would expect is
16 this would be raised by the construction team, it would
17 be vetted by the quality assurance manager. By the time
18 it got to me, I would typically accept what he had
19 determined.

20 Q. In a normal situation -- we are not just talking about
21 this particular NCR -- when your team gives you the NCR
22 prepared by them, how would you verify and confirm
23 whether the contents are correct before you put your
24 signature on it?

25 A. I would expect to have a conversation with whoever
26

1 brought it to me, just to get a base understanding at
2 least.

3 Q. But as stated in your witness statement, you could not
4 recall whether you actually looked at this particular
5 NCR; do you remember that?

6 A. I have actually stated that I've signed it, so I have
7 viewed it. I can't recall if there was a particular
8 discussion. I can't recall, sorry.

9 Q. Thank you. By now, I suppose, you would have had
10 an opportunity to look at the contents of this NCR and
11 the photos attached to this particular document; right?

12 A. I have seen them, yes.

13 Q. If I can take you to have a look at 20363. Upon looking
14 at this particular photograph, would you find this
15 problem or find the problem shown on this photograph
16 alarming?

17 A. Just this photograph suggests that there's no threaded
18 bar into the couplers there. Yes, it's alarming.

19 Q. Yes. Would you agree that this picture shows that
20 certain threaded rebars, at the lower level, were not
21 properly screwed in before the upper level of
22 reinforcement bars were installed?

23 A. It's difficult to determine that from the photo, for me.

24 Q. So, on the face of it, apart from the issue of
25 workmanship, would you consider that that might be
26

1 a problem with Leighton's inspection and supervision
2 process?

3 A. If it hadn't been picked up, I would agree, but in this
4 case my view is that the inspection was done, it was
5 picked up, it was rectified. That is, in my
6 understanding, the intent of the process, of the
7 inspection process, to ensure that we don't cover up
8 defective work.

9 Q. Yes. But would you agree that obviously it was picked
10 up subsequently by the team?

11 A. Yes.

12 Q. But would you agree that this picture actually shows
13 that during the work process, obviously the threaded
14 rebars were not screwed in properly before additional
15 layers of reinforcement were installed, so there could
16 be a problem regarding inspection and supervision at the
17 time when the work was being carried out; would you
18 agree?

19 A. It's potentially the case, yes.

20 Q. So if we can then take a look at your witness statement,
21 paragraph 24, page 20695. You say:

22 "The fact that 5 defective rebars were identified
23 and documented in NCR157 indicates to me that project
24 quality system was working effectively. This is the
25 type of issue that the system is intended to pick up and
26

1 rectify to ensure that defective works were not included
2 in the permanent works."

3 This is what you say about the quality system.

4 A. That's actually what I said just a moment ago, yes.

5 Q. But in view of your earlier answer to my question, would
6 you agree that, at the same time, the NCR also might
7 show or identify a problem as to supervision and
8 inspection work, as at the time when the actual coupling
9 work was being carried out?

10 A. I accept that if the coupler had been threaded in in the
11 first instance, it wouldn't have been raised. I also
12 would suggest, though, that this is so commonplace in
13 the industry that you go through an inspection process
14 and things are not constructed correctly so you make
15 them good.

16 Q. Thank you.

17 CHAIRMAN: I suppose -- sorry to interrupt -- really the
18 question may be: a lot of the time, when you see
19 something, you can just see it's poor workmanship. You
20 know, to take a rather silly example, splashing paint,
21 shall we say, on a skirting board when it shouldn't be;
22 do you know what I mean? That's not an engineering
23 matter but it's similar, whereas here, if what you're
24 seeing is a failure to even actually thread in the
25 couplers at all, and it's against a contract where

26

1 there's a lot of couplers to be done and maybe the work
2 is not that easy to do, if you're looking to root cause,
3 would you not perhaps want to investigate why the
4 couplers were not put in and whether that is indicative
5 of perhaps -- for the future if not the past, because
6 you've done your inspections -- but for the future might
7 the workmen face similar problems?

8 A. I think the answer is yes, it may.

9 CHAIRMAN: But there doesn't appear to have been any
10 comeback on that.

11 A. In documentary, not that I'm aware of, no. Apart from
12 the NCR being issued to the sub-contractor, to make the
13 principals of that company aware of the issue.

14 CHAIRMAN: Yes.

15 MR KHAW: Mr Rawsthorne, would you also agree that by
16 looking at the photograph that we have just seen, apart
17 from a mere workmanship problem, it might give rise to
18 a possibility as to whether people would try to cut
19 corners?

20 A. It's -- I don't know. Actually, I don't know.

21 Q. Just as a matter of background, at the time when you
22 received this NCR from your team, were you aware of any
23 previous threaded rebar cutting incidents from your
24 team?

25 A. No.

26

1 Q. So this was the first time?

2 A. This is the only thing that I'm aware of.

3 Q. We just saw that in the NCRs issued to Fang Sheung,
4 Fang Sheung was required to carry out investigation, try
5 to find out the root cause of the problem, et cetera.

6 Do you know whether any follow-up actions were taken
7 in order to coordinate with Fang Sheung, to see whether
8 the root cause could be found or not?

9 A. No, I don't.

10 Q. At the time when -- you have probably answered this
11 question already, but just to clarify -- at the time
12 when you received this NCR or at the time when you were
13 required to sign on this NCR, were you aware of the
14 actual requirements for inspection and supervision of
15 coupling works?

16 A. The detailed requirements, no, I don't believe I was.

17 Q. Thank you. If we can then just move on to take a look
18 at a particular point you mentioned. It starts from
19 paragraph 25 of your witness statement:

20 "In early January 2017, I saw a copy of an email
21 from Jason Poon ... to Anthony Zervaas and our
22 construction manager alleging that threaded rebars had
23 been cut short, and not properly fixed to the diaphragm
24 wall couplers on the EWL slab. This email referred to
25 works that had been completed almost a year earlier.

26

1 26. In the months leading up to this email, payment
2 disputes between Leighton and China Technology had been
3 increasing. When this email was received, I believe the
4 consensus opinion at both Leighton and MTRC was that
5 Jason Poon had raised the allegations in order to
6 negotiate a better deal for his company. I also
7 believed this to be the case."

8 I'm quite interested to know how this consensus
9 opinion was actually reached. You refer to consensus
10 opinion. Now, obviously, at this time, ie
11 January 2017 --

12 A. Mm-hmm.

13 Q. -- you were aware of this NCR which showed you that
14 there were threaded rebars having been cut; right?

15 A. Actually, I don't believe I was aware of it. At that
16 point in time, I don't believe I had a recollection --
17 certainly I didn't have a recollection until it was more
18 recently put in front of me -- at that time, I don't
19 believe I had a recollection of it.

20 Q. I see. So when you said you were referring to the time
21 when you received Jason Poon's email in early January
22 2017, you did not actually apply your mind to this NCR
23 incident; is that correct?

24 A. I did not recall this NCR.

25 Q. But in that case, when you were reaching this consensus
26

1 opinion, who else participated in the discussion before
2 this consensus opinion was obtained?

3 A. I think I say that this is my belief; yes? At the time,
4 there was of course discussion about this allegation.
5 In the lead-up to this allegation, there had been more
6 and more frequent disagreements/dispute on payment with
7 China Technology. I think it was a general
8 understanding.

9 Could I say somebody agreed with it? No,
10 I couldn't, apart from what their witness statements
11 say. But is there a document that says that we all
12 agree it? No.

13 Q. I understand. But what you are trying to say here was
14 that at least in general, you reached a conclusion that
15 Mr Jason Poon had raised the allegation in order to
16 strike a better deal?

17 A. That was my belief at the time. That was absolutely my
18 belief at the time, and I understood that to be the
19 general understanding.

20 Q. You also came to the conclusion at that time that
21 Mr Jason Poon's allegation could not be substantiated;
22 it had no substance?

23 A. I had no knowledge that would substantiate it. I had no
24 hard document, I had no evidence that would substantiate
25 that, that I'm aware of.

26

1 Q. Now, when you use this word "consensus", I would be
2 interested to know with whom you discussed this opinion,
3 before you could reach this consensus.

4 A. Again, it is an opinion that I held at the time; yes.

5 Q. Yes.

6 A. That is an opinion that I held at the time.

7 Q. Yes.

8 A. I think in discussions with Michael Fu from MTR,
9 perhaps, in forums where Aidan Rooney was present,
10 certainly with Anthony Zervaas, certainly with Joe Tam,
11 the understood underlying cause was commercial.

12 Q. So it was not just one occasion where you discussed
13 this; there was a series of discussions that you had on
14 this?

15 A. There may have been informal, ad hoc. Certainly my
16 office was right next door to Anthony, so there was
17 a fairly easy communication between ourselves. I spoke
18 with Joe Tam daily. I spoke with Michael Fu pretty much
19 daily, with Michael's team also. We met with Aidan at
20 least twice a week in those days.

21 Q. So am I correct in saying that, at the time when you met
22 the other gentleman from Leighton, the other gentleman
23 from MTR, at that time, the general view was that, "Oh,
24 come on, this must be fake allegation, we don't have to
25 worry about it"? Is it the general --

26

1 A. I think the general view was that there was nothing that
2 was tangible proof that showed there was something
3 wrong.

4 As I said, at the time, I didn't have a recollection
5 and I'm going to assume the other people who were part
6 of this situation, I guess they didn't have
7 a recollection of the earlier NCR, so at the time, it's
8 12 months after the bulk of the concrete is cast, if
9 there was to be an allegation, you would expect it to
10 have come out much earlier, rather than all the work's
11 done, it's all covered, it can't be proved -- well, it
12 can't easily be proved -- and then the allegation comes
13 out.

14 Q. And, at that time, were you aware of any investigation
15 being conducted in relation to Mr Jason Poon's
16 allegations?

17 A. By Stephen Lumb?

18 Q. Yes.

19 A. Yes.

20 Q. Were you interviewed by him?

21 A. No. I've already spoken to Mr Pennicott about that,
22 I think. No, I wasn't.

23 Q. Finally, I just want to name a few individuals to see
24 whether you know of them. Are you aware of a person
25 called Ho Cheuk Yiu, who was one of the appointed
26

1 quality control coordinators, ie TCP T3 under the site
2 supervision plan? Were you aware of this person, Ho
3 Cheuk Yiu, Nigel?

4 A. Nigel Ho? Yes, I am aware of Nigel Ho.

5 Q. Would you agree that he was responsible for supervision
6 and inspection work?

7 A. Nigel, yes, but Nigel had an area allocation to the
8 works. The station build in HUH was split up into
9 areas, under construction managers, with site agents
10 under him looking after various parts of it.

11 Q. You remember a person called Wong Chi Ching was also
12 TCP T3?

13 A. Wong Chi Ching? I would need to see an English name or
14 a photograph, I'm sorry.

15 Q. Edward Lee; any idea?

16 A. I do recall an Edward Lee, yes.

17 Q. Was he also responsible for supervision and inspection
18 works?

19 A. I believe he would have been responsible for some
20 inspection work, yes.

21 COMMISSIONER HANSFORD: Sorry, Mr Khaw, we spent a little
22 while differentiating between supervision and
23 inspection, and now you are lumping them together again.

24 MR KHAW: I'm sorry. Yes.

25 COMMISSIONER HANSFORD: It would be helpful -- unless
26

1 there's a very good reason for it, it would be helpful
2 if we could stick to either supervision or inspection.

3 MR KHAW: Yes, I will.

4 COMMISSIONER HANSFORD: Thank you.

5 MR KHAW: Perhaps it would be an appropriate time.

6 COMMISSIONER HANSFORD: Sorry, I didn't mean to stop you for
7 that reason.

8 MR KHAW: I could save time, make use of the time to just
9 review this point.

10 CHAIRMAN: Mr Boulding, will you have questions to ask?

11 MR BOULDING: I think at the moment just two or three
12 questions by way of clarification only.

13 CHAIRMAN: Then we will return after lunch. I thought if we
14 could dispose of it within five minutes, but probably
15 not, especially as Mr Khaw wants to do a little checking
16 over the luncheon.

17 MR KHAW: Yes.

18 CHAIRMAN: Mr Rawsthorne, I'm very sorry, I'm going to have
19 to ask you to come back after lunch. You are giving
20 your evidence at the moment and it's a rule of our law
21 that while you are giving evidence, you are not entitled
22 to discuss it with anybody else. The fact is lots of
23 people in these situations find they get all sorts of
24 unwarranted questions and suggestions, and you must
25 ignore all of them and not discuss.

26

1 WITNESS: All right.

2 CHAIRMAN: Once you have completed your evidence, then
3 of course that's a matter for you, but not now.

4 WITNESS: Thank you.

5 CHAIRMAN: Thank you very much. 2.15.

6 (1.03 pm)

7 (The luncheon adjournment)

8 (2.18 pm)

9 MR KHAW: Mr Chairman and Mr Commissioner, upon review of
10 the transcript this morning, I understand that in fact,
11 the matters regarding the distinction between inspection
12 and supervision have been fully covered in
13 Mr Pennicott's questions. I probably missed it or
14 I probably just day-dreaming when he was doing it.

15 In that case, I will probably cut short the line of
16 questioning that I initially intended to pursue.

17 There is just one more question that I would like to
18 ask Mr Rawsthorne.

19 Mr Rawsthorne, do you have any personal knowledge as
20 to how the defective works under the NCR that we have
21 looked at were eventually rectified?

22 A. Personal direct knowledge, no. I understand from the
23 initiating email that they had been rectified
24 immediately at the time, but personal direct, no.

25 Q. Do you have any knowledge as to when this NCR was
26

1 eventually closed out, by using Leighton's terminology?

2 A. No.

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

4 Cross-examination by MR BOULDING

5 MR BOULDING: Good afternoon, Mr Rawsthorne. I appear for
6 MTR, and I would like to ask you one or two questions
7 about what you told my learned friend Mr Ian Pennicott
8 this morning, if I may.

9 Do you remember being asked by Mr Pennicott about
10 the weekly site walks?

11 A. Yes.

12 Q. It's right, is it not, that they took place on a Monday
13 morning?

14 A. Almost always, yes.

15 Q. And I think you said that they lasted something like two
16 or two and a half hours; correct?

17 A. I think it was two and a half, perhaps three hours, as
18 the norm.

19 Q. My recollection is that you said that Leighton
20 representatives would be there?

21 A. Yes.

22 Q. And I think you said you'd attend?

23 A. Yes.

24 Q. The project director would attend, and more often than
25 not the operations manager would also be there; is that

26

1 correct?

2 A. In the period that I was talking about, which was 2015
3 to 2016, yes.

4 Q. Right. I think you also said, did you not, that the
5 construction managers would attend their section of the
6 walk?

7 A. Yes.

8 Q. What was the purpose of that?

9 A. The walk typically covered the vast majority of the
10 site, and we had a construction manager who looked
11 after -- or a construction manager, for want of
12 a different name, who looked after the HHS work, we had
13 a guy who looked after the NAT and SAT work, we had two
14 sections in the HUH, the station works. So those
15 gentlemen joined us for the part of the walk that was in
16 their area.

17 Q. I see. I think you also said that representatives from
18 MTR would attend?

19 A. Yes.

20 Q. I recall you mentioning a Mr Aidan Rooney; is that
21 correct?

22 A. Yes.

23 Q. And also a Brendan Reilly?

24 A. Yes.

25 Q. And a Kit Chan?

26

1 A. Yes, in that same time slot, that same window of time.

2 Q. Anyone else you remember from MTR attending --

3 A. Subsequently, Michael Fu, and I think towards the end,
4 at times, James Ho and Joe Cheung would also join for
5 their parts.

6 Q. Right. My note records that you told the learned
7 Commissioners that sometimes sub-contractors would tag
8 along, I think was your phrase.

9 A. I can't remember exactly my phrase. If there was
10 a particular issue at a particular area, sometimes there
11 would be a request that, "Can we have the sub-contractor
12 there, please, so we can all get on the same page", so
13 to speak.

14 Q. It's right, is it not, that you told my learned friend
15 Mr Pennicott that from time to time Mr Poon of China
16 Technology would attend the weekly walks?

17 A. Yes.

18 Q. And presumably you are aware, are you not, that the
19 Commission of Inquiry has heard evidence from Mr Poon of
20 the wholesale cutting of threaded rebar; are you aware
21 of that?

22 A. I am aware of that, yes.

23 Q. And presumably you would agree that if that occurred, it
24 is in fact a serious malpractice?

25 A. Absolutely.

26

1 Q. I think you used the phrase "alarming" just before
2 lunch, when you were discussing the matter with counsel
3 for government.

4 A. Perhaps.

5 Q. It's right, is it not, that if it indeed occurred on
6 a wholesale basis, it would have serious safety
7 implications for the works?

8 A. I would expect so, yes.

9 Q. During the course of these weekly walks, when Mr Poon
10 attended, was there anything to prevent Mr Poon from
11 telling Leightons that this wholesale cutting of rebar
12 was going on?

13 A. Not that I'm aware of, no.

14 Q. Was there anything to prevent him from telling MTR
15 representatives who were on the site walk that this
16 wholesale practice was going on?

17 A. Not that I'm aware of, no.

18 Q. To your knowledge, did Poon ever raise the matter of
19 wholesale cutting of threaded rebar during the course of
20 these walks?

21 A. To my knowledge, no.

22 Q. Did he in fact raise the issue that threaded rebar was
23 being cut at all during the course of the walks?

24 A. To my knowledge, no.

25 MR BOULDING: Thank you very much, Mr Rawsthorne.

26

1 No further questions, sir.

2 CHAIRMAN: Thank you.

3 MR WILKEN: Sir, a brief re-examination, if I may.

4 CHAIRMAN: Yes.

5 Re-examination by MR WILKEN

6 MR WILKEN: Good afternoon.

7 At the beginning of your questioning by
8 Mr Pennicott, you were asked about the China Tech
9 sub-contract; do you remember that?

10 A. Yes.

11 Q. And you were asked about the provisions by which
12 China Tech would be charged if it did something wrong?

13 A. Yes.

14 Q. I just want to take you to some further examples of
15 that. Can we go to D1, page 130, and there you see, at
16 item 4:

17 "Failure to attend site safety induction given by
18 the contractor prior to commencing work, attend ...
19 refresher ... comply with safety and health
20 induction/refresher training procedures."

21 Do you see that?

22 A. Yes.

23 Q. And that's \$1,000. Then:

24 "Failure to attend site safety walk managed by the
25 contractor" is 2,000.

26

1 Then over the page, at 13:

2 "Failure to implement or comply with permit-to-work
3 system applied on site ..."

4 Do you see that --

5 A. Yes.

6 Q. -- another \$1,000?

7 The next topic. You were asked by Mr Pennicott and
8 Prof Hansford about how the rebar was inspected; do you
9 remember that line of questioning?

10 A. (Nodded head).

11 Q. Can I just take you to some evidence that you may not
12 have seen, or may not have seen recently. Can I take
13 you to the statement of Mr Mok, C12, page 8112,
14 paragraph 25(a). He says:

15 "There were in fact two formal inspections. The
16 first was undertaken after Fang Sheung had completed the
17 bottom layers of rebars and the second after the top
18 layers were completed."

19 Do you see that?

20 A. I do.

21 Q. Can I take you to another witness statement at
22 C27/20664, 17(a).

23 MR PENNICOTT: Whose is this?

24 MR WILKEN: This should be Mr Man Sze Ho:

25 "There were in fact two formal inspections. The
26

1 first was undertaken after Fang Sheung had completed the
2 bottom layers of rebars and the second after the top
3 layers were completed."

4 Finally on this line, can you go to B1, page 425,
5 and this is a statement from Mr Kobe Wong.

6 At 25.2:

7 "As far as I understand the ConEs [who I imagine are
8 construction engineers], typically, LCAL would request
9 MTRCL's ConE to inspect the bottom layer at early stage,
10 and then the ConE would subsequently return (upon LCAL's
11 further notification) to inspect the top layer once it
12 was complete."

13 So we see there that what in fact happened was that
14 the bottom mat was inspected, people went away and then
15 they came back and inspected the top layer?

16 A. Yes.

17 Q. Can I take you to the next topic, which is remedials.
18 You were asked just now about them. Can I take you to
19 B6/4131.

20 I'm going to need to zoom -- blow up the top
21 photograph, so we can look at the bottom right-hand
22 corner.

23 I think everyone agrees that this is the photograph
24 of the remedials being done under the NCR. Have you
25 seen it before?

26

1 A. I think so.

2 Q. Can you see the bottom right-hand corner and can you
3 read out the date stamp?

4 A. That's 15th of the 12th, is it not, 2015, 8.15?

5 Q. So the remedials were done on 15 December?

6 A. Of that I was aware.

7 Q. Finally, you were asked some questions about your belief
8 as to whether there was a consensus between you and
9 MTRCL as to what you thought about Mr Poon. Again, can
10 I take you to some evidence that you may not have seen.
11 B1/20573. This is Mr Rooney's statement.

12 This is Mr Rooney quoting from an email dated
13 6 January 2017 which he sent to Mr TM Lee, and you see
14 he said there, in the italics, second paragraph:

15 "This is a part of Jason's strategy to put pressure
16 on Leighton to pay him the extra \$3 million this week."

17 A. Okay. I've never seen this before, but it's
18 effectively, I think, what I said.

19 MR WILKEN: Sir, I have no further questions for this
20 witness.

21 CHAIRMAN: Thank you very much.

22 Peter?

23 Thank you very much indeed. It's very good of you.

24 You've finished your evidence now --

25 WITNESS: Thank you.

26

1 CHAIRMAN: -- and you can go. Thank you for attending.

2 (The witness was released)

3 MR WILKEN: Sir, I am remaining on my feet because I have to
4 make a request to the Commissioners. We are due to have
5 a changing of the guard on Leighton's team for the next
6 few witnesses. Obviously no disrespect to the
7 Commissioners, but I will be next door, as opposed to in
8 the room.

9 CHAIRMAN: All right.

10 MR WILKEN: Due to site constraints of where we are, I need
11 about five minutes to ship all my electronics out of
12 here, into the room next door, so that Mr Chang can then
13 move forward and take my place.

14 CHAIRMAN: That's fine. Five minutes. Or rather five
15 minutes, or until you tell us you are ready.

16 MR WILKEN: Thank you, sir.

17 (2.31 pm)

18 (A short adjournment)

19 (2.39 pm)

20 MR SHIEH: Mr Chairman and Mr Commissioner, can I call Mr So
21 Yiu Wah, Gabriel.

22 Mr So, please put on your headphones. Good
23 afternoon and welcome.

24 WITNESS: Good afternoon.

25

26

1 MR SO YIU WAH, GABRIEL (affirmed in Punti)

2 Examination-in-chief by MR SHIEH

3 MR SHIEH: Now, Mr So, can you look at bundle C27,
4 page 20654, and the English is at 20657.

5 Can you find it, Mr So?

6 A. 搵到。

7 Q. This is your first witness statement; you see that?

8 A. 見到。

9 Q. Can you then turn to page 20656, and in the English
10 version it is 20659. Above your Chinese name, you can
11 see what appears to be a signature; do you see that?

12 A. 見到。

13 Q. That is your signature; correct?

14 A. 冇錯。

15 Q. Can I then ask you to look at bundle C32, 24103. The
16 English is 24108. That is your second witness
17 statement; do you see that?

18 A. 見到。

19 Q. Then turn to page 24107. In the English version, it's
20 24112. Above your Chinese name, you see what appears to
21 be your signature; do you confirm that?

22 A. 冇錯。

23 Q. Do you wish to put forward the contents of these two
24 witness statements as your evidence in this Commission
25 of Inquiry?

1 A. 冇問題嘅。

2 Q. Just two things. First of all, please remain seated
3 because lawyers for the other parties and also lawyers
4 for the Commission of Inquiry will be asking you some
5 questions.

6 A. 清楚。

7 Q. The Commission, Mr Chairman and the Commissioner, will
8 also be asking you some questions if they want to.

9 A. 冇問題。

10 Q. Then I may have a final roundup, to ask you questions if
11 I want to. Do you understand?

12 A. 明白。

13 Q. Secondly, when you give an answer, can you speak up into
14 the microphone, because any nodding or gestures may not
15 be captured or will not be captured by the recording
16 devices and won't go into the transcript.

17 A. 清楚。

18 MR SHIEH: Thank you. Please remain seated.

19 Examination by MR PENNICOTT

20 MR PENNICOTT: Mr So, good afternoon.

21 A. Good afternoon.

22 Q. My name is Pennicott, I'm one of the counsel to the
23 Commission, and as Mr Shieh has just indicated, I get to
24 ask you some questions first, and others may do
25 afterwards.

1 Mr So, you tell us that you were the general
2 superintendent of the project between May 2015 and
3 January 2016; is that correct?

4 A. 冇錯。

5 Q. And, in January 2016, you then became the site manager?

6 A. 正確。

7 Q. For how long did you remain the site manager?

8 A. 由2016年1月直至而家都係。

9 Q. You are still the site manager?

10 A. 正確。

11 Q. As I understand it, both in your role as the general
12 superintendent and the site manager, your
13 responsibilities covered the whole of the site; is that
14 correct?

15 A. 正確。

16 Q. Good.

17 Can I refer you, please, to paragraph 6 of your
18 witness statement. It's up on the screen or you can
19 look at the hard copy in Chinese, Mr So, whatever suits
20 you.

21 You say in paragraph 6:

22 "I was supported by the site supervision team. The
23 team comprises superintendents, supervisors and then
24 foremen from each of the areas of the project site.
25 While I would conduct general site supervision checks,

1 my team would carry out more detailed checks and report
2 back to me on material matters."

3 Now, let's start with the foremen. Did they have,
4 as it were, direct access to you, Mr So, as the general
5 superintendent, or, if they wished to raise any issues,
6 did they have to, as it were, go up through the
7 supervisors and the superintendent? Did they have
8 direct access to you?

9 A. 絕對地冇問題，可以直接搵我，因為始終科文同埋有啲管工係中國人，同
10 Khyle可能有少少溝通上嘅問題，所以就會直接話畀我聽，我再--有啲咩嘢
11 問題，我都會同Khyle講番啲啲同事有啲咩嘢問題。

12 Q. That was a reference to Mr Rodgers, Khyle Rodgers; yes?

13 A. 正確。

14 Q. Presumably, therefore, the same would apply to the
15 supervisors; they had direct access to you as well?

16 A. 正確。

17 Q. So far as the superintendents were concerned, how did
18 their role differ to yours?

19 A. 地盤總監就係嗰個area嘅in charge，而我作為高級總監，就要睇住個
20 whole site。

21 Q. So would there be a superintendent for each area, for
22 area C, B, A, HKC, SAT, NAT?

23 A. 我哋分咗四個區有總監嘅，一個係SAT，一個係NAT，HUH同埋HHS，係
24 concourse就有嘅。

25 Q. Right. So there would be four superintendents?

1 A. 正確。

2 Q. For each area, how many supervisors would there be?

3 A. 我唔記得個實際嘅數量。

4 Q. Would it vary from time to time?

5 A. 有呢個可能性，但係嗰個變化唔會太大。

6 Q. All right. But are we talking two/three/four
7 supervisors for each area, approximately?

8 A. 我諗at least可能有四個嘍喇。

9 Q. Right. Then, so far as foremen were concerned, again
10 presumably there would be more foremen than there were
11 supervisors?

12 A. 頭先我講四個係包埋有supervisor、科文，around每個區可能有四至五個
13 嘍。

14 Q. All right, combined, supervisors and foremen?

15 A. 正確。

16 Q. Thank you very much.

17 Now, so far as the fixing of the rebar is
18 concerned -- and let's focus on the EWL slab, fixing of
19 the rebar -- firstly, what would be the role of the
20 superintendents in relation to the fixing of the rebar?

21 A. 總監嘅角色就係佢安排咗supervisor、科文，佢可能因為HUI再細分咗C1、
22 C2、C3，每個區域唔同嘅管工佢每日嘅工作。至於總監嘅角色會唔會去detail
23 到落去睇每一條rebar嘅connection，我相信唔會，因為佢有佢嘅團隊去
24 back up佢。

1 Q. Right. So he would be organising the supervisors and
2 the foremen but not necessarily doing any direct
3 supervision himself; is that right?

4 A. 冇錯。

5 Q. Now, as far as the supervisors and foremen are
6 concerned -- and I'm still focusing on the fixing of the
7 rebar, nothing else at the moment -- what would their
8 role be as the fixing was taking place?

9 A. 佢哋嘅角色係跟番之前--因為我哋每一日都有個progress meeting, 同
10 sub-contractor一齊開嘅, 大家喺之前嗰日定咗可能要做嗰個bay嘅, 佢就
11 要監管番佢有冇跟番我哋之前所講嘅, 有冇足夠嘅resource去做, 有冇跟番
12 嗰日嗰個流程, 要完成到某一個階段嘅嘢, 當然佢哋都會負責要監控even係
13 安全或者係其他嘢。會唔會detail到去又係逐條逐條去望, suppose應該有
14 嘅, 即係佢企喺度望住佢嗰個人去做。

15 Q. No. So they wouldn't -- let's suppose we've got a day
16 that runs from 8 o'clock in the morning to 6 o'clock in
17 the evening. You wouldn't expect the supervisors and
18 foremen to be there throughout those ten hours?

19 A. 唔係話--我頭先嘅意思就係話佢唔會企喺嗰個位置十個鐘頭, 因為佢嗰個
20 area C1可能係有番咁上下嘅大, 所以佢會行開、行埋。

21 Q. Right. But, generally speaking, would there be one or
22 more supervisors or foremen in the area throughout the
23 day, always some presence at some level?

24 A. 會, 但係嗰個區域未必淨係得紮鐵工序, 可能有其他工序都仍然進行緊。

25 Q. Yes. So they would be keeping their eye on whatever

1 work was going on, bar fixing and other work?

2 A. 正確。

3 Q. All right.

4 Can I ask you this, Mr So: have you ever read or
5 seen the site supervision plan of Leightons?

6 A. 冇。

7 Q. In paragraph 7 of your witness statement, the last
8 sentence, you say:

9 "I was not responsible for overseeing or inspecting
10 the quality of the works, which was a matter for
11 Leighton's engineers to deal with the engineers of MTRC
12 and also the sub-contractors."

13 Do you see that?

14 A. 睇到。

15 Q. Could I ask you, please, to be shown, firstly,
16 bundle H10, page 4543. That's the front sheet, if you
17 look on the screen, Mr So. The hard copy is just about
18 to be handed to you. It's the site supervision plan.

19 If you go over the page to 4544, you will see that
20 relates to Hung Hom Station, certain gridlines,
21 substructure for EWL track level and excavation and
22 lateral support works; do you see that?

23 A. 見到。

24 Q. If you go over the page to 4548, so a couple of pages
25 on, please, you will see at the top it says,

1 "Supervision plan of the registered contractor", that's
2 Leighton; do you see that?

3 A. 見到。

4 Q. Then at 13 it says:

5 "The technically competent persons for site
6 supervision under the registered geotechnical engineer's
7 stream required for the specified type of works are ..."

8 Then if we scroll down, please, we see you, as
9 I understand it, at the bottom. That is, you are a "T1
10 (alternative)"; do you see that?

11 A. 見到。

12 Q. Similarly, if we go back in the same bundle -- sorry, we
13 don't need to.

14 Could I ask you to put that file away, and could
15 I ask you then to be shown another document called the
16 quality supervision plan.

17 Have you seen Leighton's quality supervision plan,
18 as opposed to the site supervision plan, Mr So? Have
19 you seen before the quality supervision plan?

20 We'll show it to you, sorry. It's H9/4265.

21 A. 未見過。

22 Q. You will see that from 4265, it's the quality
23 supervision plan on enhanced site supervision and
24 independent audit checking, by MTRC and RC, that's
25 Leighton, for installation of couplers. Do you see
26 that?

1 A. 睇到。

2 Q. If you go over the page to 4267, please, right at the
3 bottom, please, you will see it says:

4 "The quality supervision is in addition to:

5 1. The site supervision plan 2009 submitted by
6 [Leighton]".

7 Do you see that?

8 A. 見到。

9 Q. Then if you go over the page, at (2) at the top it says:

10 "The same technically competent persons proposed in
11 the site supervision plan of the works, that submitted
12 to Buildings Department as stipulated in the Code of
13 Practice for Site Supervision, will be responsible for
14 the quality control of the work."

15 Now, we've seen that you were a T1 or an alternative
16 T1. That's the technically competent person
17 classification. And, under this quality supervision
18 plan, you were responsible for the quality control of
19 the work.

20 So why is it, Mr So, that you say in your witness
21 statement that the quality of the work was a matter for
22 Leighton's engineers?

23 A. 我當時份陳述書係講我唔係專責，因為final係會有工程師去跟進番鐵嘅
24 inspection同埋地鐵嘅人員。

25 Q. So, as you saw it, irrespective of what the documents

1 might show, you regarded quality control as being in the
2 hands of Leighton's engineering team?

3 A. 正確，全對。

4 Q. And you saw your role, is this right, primarily in
5 relation to safety and to progress?

6 A. 安全就係我嘅首要工作先。

7 Q. All right. Could we move on to a different topic,
8 Mr So.

9 Could I ask you, please, to be shown a police
10 statement of Mr Jason Poon, at D1/760 in the Chinese,
11 D1/765.1 in the English.

12 Do you have that, Mr So?

13 A. 見到。

14 Q. Can you go, please, to paragraph 7. Sorry, if you
15 didn't catch it, this is a police statement given to the
16 police by Mr Jason Poon on 10 July this year, 2018,
17 Mr So, just for your information.

18 Is this a document you've seen before?

19 A. 冇見過。

20 Q. Right. That's what I anticipated and that's why I'm
21 going to show it to you.

22 Back to paragraph 7. This is Mr Poon speaking to
23 the police and what they recorded. It says this:

24 "At around 3 pm on a certain day in early September
25 2015 (exact date could not be provided), I had a meeting

1 with Mr So" -- don't worry about the typo -- "Leighton's
2 supervisor of on-site works, and Mr Khyle Rodgers,
3 a foreigner who was Mr So's superior ..."

4 Now, don't worry about the error that Mr Poon has
5 made there, or what I understand to be the error, which
6 you and Mr Rodgers have explained, but you are
7 Mr Rodgers' boss, not the other way around; do you
8 understand? Don't worry about that.

9 It goes on:

10 "... [they] had a meeting ... at the Food Forum in
11 level 'M' of Hung Hom Station to discuss about the
12 incident of Leighton staff cutting short the threaded
13 heads of rebars. When I verbally reflected to both of
14 them about their company staff cutting short threaded
15 heads of rebars, Mr So orally replied stating that he
16 did not know which staff cut threaded heads of rebars,
17 and would investigate into the matter and would order
18 staff of his company not to cut threaded heads of
19 rebars. Mr Rodgers did not provide any reply in respect
20 of the incident. The meeting lasted for about
21 20 minutes, and afterwards we left the meeting
22 separately."

23 Can I ask you this, please, Mr So: do you have any
24 recollection of meeting Mr Poon and Mr Rodgers in early
25 September at the Food Forum in level M of the Hung Hom
26 Station?

1 A. 我有去過美食廣場，但係我唔知道喺嗰段期間有冇撞過或者係遇見過潘焯鴻
2 先生，但係就肯定潘先生冇同我向--討論過呢一個cut螺絲頭嘅問題。

3 Q. Did you or did you not say to Mr Poon that you did not
4 know which staff cut the threaded heads of rebar?

5 A. 正如頭先我畀你嘅答案，就係我哋冇討論過呢個問題，我點會有頭先嗰個
6 答案畀你？

7 Q. Did you or did you not say to Mr Poon that you would
8 investigate the matter?

9 A. 冇。

10 Q. Did you or did you not say to Mr Poon that you would
11 order your staff not to cut the threaded heads of rebar?

12 A. 冇。

13 Q. Could I then ask you, please, to look at paragraph 9 of
14 this same statement. What is recorded here, Mr So, is:

15 "On a certain day between 15 ... and 22 September
16 2015 ..., under the guise of inspection of safety
17 facilities on site, I asked Mr So and Mr Rodgers to
18 conduct site inspection of Hung Hom Station with me
19 together."

20 Do you have any recollection, Mr So, of such
21 an inspection taking place with you, Mr Rodgers and
22 Mr Poon, between 15 and 22 September?

23 A. 上述日子唔記得，但係因為之前周不時都會關於啲人手嘅安排同埋啲安全
24 嘅問題，我都會搵潘焯鴻先生。

25 Q. All right. Let me just read on. Going down a few

1 lines, picking it up at the sentence that begins, "The
2 three of us", it is recorded that what Mr Poon said was
3 this:

4 "The three of us met at around 5 pm at the entrance
5 of SAT in the site, and we walked towards bay 'C1-4'."

6 Do you remember meeting Mr Poon at about 5 o'clock
7 one late afternoon at the entrance of the SAT?

8 A. 唔記得。

9 Q. He goes on to say:

10 "After walking for about 45 minutes, we reached bay
11 'C1-4', I saw two Chinese men (about 30 to 40 years old,
12 medium built, I recognised that they were staff
13 responsible for carrying out welding process, other
14 details could not be provided) wearing royal blue,
15 orange and yellow coloured polo T-shirts as well as
16 reflective vests bearing the logo of Leighton using
17 hydraulic cutter to cut short the threaded heads of
18 rebars in rebar bundles (with 10 or more rebars wrapped
19 together in each bundle of rebars)."

20 Now, Mr So, do you have any recollection of seeing
21 what Mr Poon describes there?

22 A. 我有見過有人cut鐵。

23 Q. Mr Poon goes on:

24 "I used English to tell Mr So and Mr Rodgers to
25 watch those workers that were cutting short threaded
26 heads of rebars."

1 I assume, given your last answer, you don't accept
2 that either, Mr So; is that right?

3 A. 因為我都未見過，我點同意？

4 Q. Right. I could read on but I won't. If anybody else
5 wishes to take you to any more of that, they can, save
6 for this last point, Mr So.

7 Do you recall being with Mr Poon at any time, not
8 necessarily at this time but any time, when he took
9 photographs?

10 A. 唔記得。

11 Q. All right.

12 Could I then ask you, please -- a different topic --
13 Mr So, there is a non-conformance report, NCR157. Could
14 you please be shown C12/8127.

15 Before we get to the non-conformance report, Mr So,
16 this is an email of 15 December 2015, from Mr Kobe Wong
17 of MTRC to Joe Leung and Andy Ip. Do you see that?

18 A. 我見到。

19 Q. It was copied to a number of people, including yourself;
20 do you see that?

21 A. 我見到。

22 Q. My understanding of your evidence, however, Mr So, is
23 that you have no recollection of seeing this email at
24 the time; is that correct?

25 A. 正確。

1 Q. My understanding of your position therefore is that you
2 never took any action upon receipt of this email?

3 A. 唔明白你想問乜。

4 Q. Well, you received this email. You say you don't have
5 any recollection of it. All I'm trying to ascertain
6 from you, Mr So, because it would appear to follow: that
7 you didn't action anything after receiving and looking
8 at this email?

9 A. 如果我當時睇到，我會有action，但係我真係印象中係冇睇過呢封email。

10 Q. All right.

11 There was a non-conformance report issued after
12 receipt of this email, issued by Leighton. Do you have
13 any recollection of the issuing of that non-conformance
14 report?

15 A. 之前我直頭係唔知有一份NCR，直至係應該一個禮拜前，我先知有一份NCR。

16 Q. Right. Could we scroll down a few pages to find the
17 NCR, please.

18 This is the NCR which you say you've only very
19 recently seen; is that right, Mr So?

20 A. 係。

21 Q. If you go to the next page, please. Could you go right
22 to the bottom of the page, please.

23 Do you see, Mr So, the bottom left-hand corner of
24 the second page, where it says, "Copyright Leighton
25 2008", then it's got "Ip Andy" and then "Chow Gary"; do

1 you see that?

2 A. 見到。

3 Q. Can you tell us, if you're able -- if you can't, please
4 say so -- whose those signatures or initials are, bottom
5 left?

6 A. 認唔到。

7 Q. Right. They're not yours?

8 A. 唔係。

9 Q. Okay. Have you read the witness statement of
10 Mr Edward Mok, a Leighton engineer?

11 A. 冇。

12 Q. In that witness statement, amongst other things, he
13 describes three incidents where he says he discovered
14 threaded rebar that had been cut. One of those
15 incidents is what gave rise to this NCR.

16 To the best of your knowledge and recollection,
17 Mr So, did Mr Mok, or anybody else, talk to you back in
18 2015 about any of those incidents?

19 A. 冇人通知過我。

20 Q. All right.

21 Could I ask you, please, a question arising out of
22 your second witness statement. Please could we be
23 shown, first of all, C32/24111. I hope it's the witness
24 statement.

25 It's paragraph 19 I want to look at, that's very

1 helpful.

2 In paragraph 19, Mr So, of your second witness
3 statement, you deal with a number of photographs that
4 are attached to Mr Poon's witness statement. Do you
5 recall that?

6 A. 記得。

7 Q. I just want to look at one of the photographs with you,
8 please, which is D1/227. It is this photograph, taken
9 on 4 September, that you describe as workers cutting the
10 top from vertical rebar; is that right?

11 A. 係。

12 Q. I think you say that you do not know who these workers
13 are?

14 A. 單憑佢嘅外表，我係冇辦法認出佢係邊個或者係屬於邊間公司。

15 Q. Right. That remains your position, does it, Mr So?
16 Even now, you can't recognise which company they worked
17 for? Is it likely that they are general labourers
18 engaged by Leighton?

19 A. 呢個可能性係有，但係始終係好難認得到佢係屬於邊間公司或者係even禮頓。

20 Q. All right. Did Leighton have a cutter such as the one
21 we can see in the photograph?

22 A. 呢個我真係唔記得。

23 Q. Mr So, one last question from me. I don't know whether
24 you know this but in January 2017, as a consequence of
25 Mr Poon writing a couple of emails to Mr Zervaas,

1 a review and investigation into the cutting of -- the
2 alleged cutting of threaded rebar was carried out by
3 a Mr Stephen Lumb, who I understand to be the head of
4 engineering at Leighton. Were you aware of that
5 investigation and review?

6 A. 唔知道。

7 Q. So does it follow, Mr So, that in January 2017, nobody,
8 Mr Lumb or anybody else, interviewed you about that
9 particular topic, that is cutting of threaded rebar?

10 A. 冇。

11 MR PENNICOTT: Thank you very much. I have no further
12 questions for Mr So.

13 CHAIRMAN: Thank you.

14 MR SHIEH: Mr Chairman, before anyone starts, perhaps it may
15 be helpful for me to correct one point of translation,
16 in case anything may turn on it by subsequent
17 questioning.

18 Can I ask the Commission to turn to the transcript
19 just now, [draft] page 117, line 20, when Mr Pennicott
20 asked:

21 "So why is it, Mr So, that you say in your witness
22 statement that the quality of the work was a matter for
23 Leighton's engineers?"

24 And Mr So answered:

25 "In my statement, I said that I was not the
26 responsible specialist, because there would be engineers

1 and MTRC staff responsible for that."

2 And then Mr Pennicott followed up on a question.

3 It we look at the English translation, at bundle C,
4 page 20658, which is C27, incidentally, paragraph 7,
5 Mr So was recorded as saying there:

6 "I was not responsible for overseeing or inspecting
7 the quality of the works ..."

8 I just wish to point out that if one looks at the
9 Chinese version, the one that is actually signed by
10 Mr So -- can I just read out the relevant Chinese
11 sentence for the record and for simultaneous
12 interpretation. That sentence actually says:

13 "我並不是專責監督或檢查工程的品質，因為工程品質會由禮頓的工程師
14 與港鐵公司的工程師及分判商處理。"

15 So in Chinese version there is the phrase
16 "專責", which may be what the witness was referring to
17 when he said "specialist". I just wish to bring that to
18 the Commission's attention, in case anything shall turn
19 on it by other people's questioning, because words
20 resembling that meaning were not there in the English
21 version.

22 CHAIRMAN: Thank you. Very good. And the next --

23 MR PENNICOTT: I don't know if they have agreed --

24 MR SO: Sir, I note the time. Would it be convenient to
25 have the break first, so I can clarify some matters with
26 my client?

1 CHAIRMAN: Yes, of course. 15 minutes.

2 MR SO: Thank you.

3 (3.27 pm)

4 (A short adjournment)

5 (3.59 pm)

6 CHAIRMAN: If we have kept you a little late, apologies. As
7 you are aware, matters do arise from time to time.
8 There's been a couple of matters that have arisen today,
9 and it's necessary for Mr Pennicott and those who
10 instruct him just to come through to discuss those
11 matters. They have been discussed.

12 If they are taken further, counsel will be kept
13 fully informed. All right? Thank you.

14 MR SO: Sir, no questions for China Technology.

15 CHAIRMAN: Thank you.

16 Cross-examination by MR KHAW

17 MR KHAW: Perhaps good news for those who can't stand my
18 voice anymore. Mr Anthony Chow of the government
19 counsel team will have some questions for Mr So.

20 CHAIRMAN: I thought for one moment you were going to say no
21 questions either.

22 MR KHAW: An anti-climax.

23 Cross-examination by MR CHOW

24 MR CHOW: Good afternoon, Mr So. I act on behalf of the
25 government and I have a few questions for you.

26 A. 午安。

1 Q. Mr So, earlier, in answer to Mr Pennicott's question,
2 you have briefly explained to us the organisation or
3 structure of the site supervision team; do you recall
4 that?

5 A. 記得。

6 Q. Can I ask you to go to the organisation chart, the
7 version dated May 2015, at bundle C7, page 5535.

8 If you can blow it up a little bit and move a little
9 bit to the left.

10 We can see that under -- perhaps a little bit more
11 to the left -- yes, do you see your name, "Gabriel So,
12 general superintendent"?

13 A. 見到。

14 Q. Earlier, you explained to us there are four different
15 areas and for each area there was a site superintendent
16 in charge of that particular area; right?

17 A. 冇錯。

18 Q. We can see from the organisation chart, the part of the
19 tree under your responsibility, there are more than four
20 areas; do you see that?

21 A. 見到。

22 Q. Can you explain why?

23 A. 因為正如之前我同--解釋過畀Mr Pennicott先生聽，其實最主要紅磡站呢
24 個project係分咗五個區域嘅啫，你見到HUH，其實佢係combine一個區嚟
25 嘅，只不過佢再細分咗一個structure，一個excavation或者係night

1 shift嘅啫，至於concourse、HHS、SAT、NAT，其實係冇變過嘅，只不過
2 係HUU佢拆分咗三個唔同嘅工種嘅啫。

3 Q. If we can now move a little bit back to the right, what
4 we see there is a separate organisation, under the
5 project manager, under the senior project manager; do
6 you see that? We have several construction managers:
7 Gary Chow and Joe Tam; can you see that?

8 A. 見到。

9 Q. Under the responsibility of, for example, the
10 construction manager, Gary Chow, we can see another tree
11 of organisation containing senior site agent, site
12 agent, and graduate engineer; do you see that?

13 A. 見到。

14 Q. So is this part of the organisation what we hear as the
15 construction engineering team of Leighton?

16 A. For engineer, 係。

17 Q. The structure under you is responsible for the site
18 supervision; is that right?

19 A. 冇錯。

20 Q. And the engineering team will take care of the formal
21 inspection with MTRC; am I correct?

22 A. 正確嚟講，應該係負責final嘅inspection。

23 Q. Right. We have heard evidence from various people and
24 from the documents that, first of all, there is
25 a quality supervision plan, which you have not heard of,

1 I gather from your earlier evidence; right?

2 A. 正確。

3 Q. The site supervision plan, again, is a document that you
4 have not seen before?

5 A. 我知道有咁嘅system，但係我真係冇聽過嗰份spec.。

6 Q. Have you heard of a document called inspection and test
7 plan?

8 A. 未聽過。

9 Q. Okay. As I understand it, the requirement in relation
10 to formal inspections at various stages of the
11 construction work is defined in that inspection and test
12 plan. Do you know or do you not know about it?

13 A. 唔清楚。

14 Q. Take it from me that a so-called hold point inspection
15 are defined in that document.

16 A. 呢個係咪即係我哋嘅所講嘅final inspection就係咪你嘅hold point
17 inspection?

18 Q. The hold point inspection that I refer to is a formal
19 inspection jointly carried out by Leighton and MTRC. So
20 is that the final inspection that you are talking about?

21 A. 以我所知，當時做緊每一個bay，佢分階段都有我哋嘅engineer同埋地鐵
22 嘅engineer都有做inspection嘅，但係before落石屎之前，佢會再做
23 一次final inspection，我就係唔清楚係咪你所想問我嘅嘢喇。

24 Q. Now, you mentioned about before concreting.

25 I understand that before concreting, there were other

1 hold point inspections as well, like inspection of
2 reinforcement. Are you aware of that?

3 A. 呢個我知道。

4 Q. From the document, we understand there were at least two
5 hold points in relation to inspection of documents. One
6 is after the multiple layers of reinforcement for the
7 bottom steel have been completed, and there would be
8 a hold point inspection for the bottom steel. Are you
9 aware of that?

10 A. Detail我唔知道究竟個hold point係hold喺個bottom layer定top
11 layer, 但係我知道佢有做inspection嘅。

12 Q. Okay. Are you saying that you don't know how many
13 formal inspection was required for the reinforcement
14 during the -- before concreting; is that your evidence?

15 A. 唔係, 我頭先想講嘅嘢就係你提及到嘅hold point喺--係界定喺個
16 bottom layer定係個top layer, 因為我淨係知每一次我見到佢哋
17 都話係做緊個inspection, 所以我唔知佢係咪做緊正如你話齋嘅
18 hold point inspection。

19 Q. Am I right to say you are not familiar with the
20 procedure, the inspection procedure?

21 A. 個sequence可以咁講, 個流程可以咁講。

22 Q. So your answer is: are you familiar or are you not
23 familiar? Can you clarify, please?

24 A. 唔熟悉。

25 Q. Okay.

1 Mr So, can I ask you to go to paragraph 7 of your
2 first statement, please, at page 20658. The Chinese
3 version of your statement is at 20654, please.
4 Paragraph 7 of the Chinese version is at 20655.

5 In paragraph 7 you said:

6 "I would start my day in the site office. There
7 would be a briefing session for about half an hour with
8 my team on general matters such as work progress and
9 safety issues on site. I would then go down to the site
10 to do the site walk and checking. Typically I would
11 spend about 70 per cent of my time at work on site.
12 I would check that the general work progress was on
13 schedule, and if not, I would require the
14 sub-contractors to bring in additional workers or work
15 overtime. I would also monitor the safety issues
16 on site and ensure works were carried out according to
17 the requirements by Leighton, MTRCL and the Buildings
18 Department."

19 Pausing here. By ensuring the works are being
20 carried out in accordance with the requirements of the
21 Buildings Department, am I right to say that to do so
22 you have, at the very least, to ensure that the works
23 are carried out in accordance with the working drawings
24 issued by MTRC, for example?

25 A. 可以咁講。

26 Q. You have to ensure the quality of the work or the

1 workmanship are up to standard as well; do you agree?

2 A. 同意。

3 Q. If you focus on the subject matter of this Inquiry,
4 regarding the installation of the threaded bars into
5 couplers, do you agree that you would have to, by
6 carrying out day-to-day supervision, ensure that the
7 threaded bars or at least the threaded part are not cut
8 without proper justification, and the intact threaded
9 part of the bar are properly screwed into the couplers;
10 that would be something that your site inspection team
11 has to ensure, is that right?

12 A. 正確。

13 Q. Are you aware of the requirement by the Building
14 Authority, as well as under the quality supervision
15 plan, that full-time and continuous supervision has to
16 be provided by Leighton for the coupling works?

17 A. 我唔清楚關於螺絲頭係需要full day嘅inspection, that mean係--
18 我意思話係個人要企咗喺嗰個位置, 係唔會離開嗰個工序。

19 CHAIRMAN: No, I think what is suggested is that there are
20 directions that require Leightons to ensure they have
21 somebody at the spot when the actual threading of rebars
22 into couplers takes place.

23 A. 係。

24 CHAIRMAN: You are aware of that?

25 A. 我知道。

1 CHAIRMAN: Was that followed, to the best of your knowledge?

2 A. 我哋係有安排管工或者係管工嘅團隊喺現場，但係我只不過係想澄清一樣嘢，
3 我哋冇--我哋喺full-time會喺嗰個area度，但係有冇100% focus喺嗰個
4 擰螺絲嗰度呢，呢個我就唔敢肯定。

5 MR CHOW: But your earlier evidence given before the
6 afternoon break is that your workers or your foremen
7 would keep an eye on whatever work was going on at the
8 time. Do you recall that?

9 A. 記得。

10 Q. So is that the level of supervision that your team
11 provided at the time; is that right?

12 A. 係，佢會喺嗰個area或者嗰個bay嗰度附近，但係唔會focus喺某一樣嘅
13 工序度。

14 CHAIRMAN: Again, I'm not attempting to be difficult, but
15 I think what is being suggested is that obviously it was
16 not a case of one supervisor for one worker. That
17 obviously would be counter-productive. The supervisor
18 might as well do it himself; all right? So that's not
19 the issue.

20 I think the issue is rather that in terms of these
21 directions, the actual act of coupling, that is screwing
22 in the reinforced steel into the couplers, was
23 considered sufficiently important that when that actual
24 act was taking place, it required to be witnessed by one
25 of the supervisors or one of the inspectors.

1 A. 係。

2 CHAIRMAN: And, to your knowledge, was that actually done?

3 Because it appears as if what you're saying is, "We had
4 people there, they were taking an interest, but I cannot
5 say that when each act of threading in the reinforced
6 steel bar to a coupler took place, that they were
7 standing by and watching."

8 A. 正確。

9 CHAIRMAN: So would it be correct to say this -- and I'm not
10 suggesting there's anything wrong in it, so just to
11 clarify -- that it may well be that in the course of
12 a day, if the steel fixers were in part or in whole
13 spending the day fixing the rebars into couplers, that
14 while there would be general supervision, there would
15 not necessarily be somebody standing by and watching
16 each process of the coupling, if I can call it that?

17 A. 正確嚟講，for我哋supervision team嗰面，我相信佢可能會有望少數，
18 一部分，即係唔係全部望晒佢扭緊螺絲嘅動作，我亦都唔清楚我哋engineer
19 team嗰面另外有冇人喺附近，亦幫手去做呢個supervision。

20 CHAIRMAN: Okay. So, on that basis then, if every single
21 act of coupling, as I have described it, was not
22 overseen by an inspector or somebody similar, it's
23 possible that perhaps it may not be threaded in to the
24 full extent, for example?

25 A. 有呢個可能。

1 CHAIRMAN: Yes, and when the general checking took place,
2 would the coupling of each and every reinforced bar be
3 tested, or would it be done on a sample basis?

4 A. 主席嘅意思係咪扭晒, fully screwed?

5 CHAIRMAN: Yes.

6 A. 佢哋都係會去望少部分。

7 CHAIRMAN: Okay. I notice you've said, if I may just for
8 a moment or two, just to finish off -- I notice you said
9 in your statement, and I'm not criticising it -- you
10 said you do not understand why anybody would have the
11 need to cut the threaded ends of rebars.

12 A. 係。

13 CHAIRMAN: But isn't your job really to be the sensible,
14 immediate face of authority, checking that everything is
15 done correctly?

16 A. 我嘅權力, 係。

17 CHAIRMAN: Would you agree that in pretty much most
18 endeavours, and construction is just one of them, people
19 will sometimes try to make short-cuts?

20 A. 有呢個機會發生。

21 CHAIRMAN: And in fact, I don't know if you're aware of it,
22 but there is evidence that certain rebars that had been
23 cut were in fact discovered, and action was taken to
24 remedy that problem; are you aware of that?

25 A. 你意思係咪講嗰次個NCR?

1 CHAIRMAN: Yes.

2 A. 嗰次個NCR，我真係唔清楚，我未見過。

3 CHAIRMAN: No, but you're aware of the fact that the subject
4 matter was the cutting of rebars?

5 A. 冇人通知過我冇人喺地盤剪鋼筋。

6 CHAIRMAN: All right. You see, it's just -- and you can
7 educate me here -- that it seems to me there could be
8 a lot of reasons to cut rebars. You could have
9 a difficult coupler that, for some reason or another, is
10 maybe a little bit damaged but not heavily damaged. It
11 may be at a wrong angle. It may be that they're getting
12 near the end of the day and they've got another ten
13 rebars to fix, and this one is just causing a problem.
14 And it may be that they are under pressure and if they
15 ask Leightons to do the work, that they know is going to
16 take a couple of hours to get sorted, and that's going
17 to bring the matter over to the next day and cause more
18 delay. Okay?

19 So my question is simply this. In light of that,
20 wouldn't you agree that whether couplers would be cut or
21 not was a matter that you had to consider, because you
22 would have known that there were in fact good reasons
23 for doing it?

24 A. 係有機會會冇人剪螺絲頭，但係我本人未見過，亦都未聽過。

25 CHAIRMAN: All right. But when you say, "I do not
26 understand why a person would have the need to do it",

1 that's perhaps not 100 per cent accurate. You
2 understand the need -- just like people may steal from
3 a building site, you know it's going to happen every now
4 and then unless you take steps to stop it?

5 A. 係，但係...

6 CHAIRMAN: So equally somebody may try to take a short-cut
7 with the rebars, especially if there's over 2,000 of
8 them to be fitted, unless you keep a good eye on it;
9 would you agree?

10 A. 係。

11 CHAIRMAN: And that may perhaps explain, would you agree,
12 why it is -- and we go back to the beginning -- there's
13 a direction that each actual act of fitting the rebar
14 into a coupler had to be witnessed?

15 A. 係。

16 CHAIRMAN: Sorry about that.

17 MR CHOW: Mr So, given the role and responsibility of the
18 site supervision team, do you agree that if your
19 subordinates were aware of the cutting of threaded bar
20 practices on site, at least they would report it to you?

21 A. 如果有發生呢類事件，我相信我嘅團隊會report畀我聽。

22 Q. Okay. So, on the basis of your answer, am I right to
23 infer that in relation to the incidents where threaded
24 part of the rebar has been cut, even your subordinates
25 were not aware of that?

1 A. 可以。

2 Q. From the witness statement of Mr Andrew [sic] Mok, we
3 know that he's a graduate engineer under the engineering
4 team.

5 MR PENNICOTT: Edward.

6 MR CHOW: You are aware of that; right?

7 A. 知道。

8 Q. He discovered several incidents where threaded rebar was
9 cut in the presence of MTRC's inspectors. I suppose you
10 are not aware of the details; right?

11 A. 係。

12 Q. According to your answers earlier, if your foreman or
13 supervisor were not aware of those incidents or the
14 practice of bar cutting, it sounds like there is not
15 much coordination between the site supervision team and
16 the engineering team. Is it a fair description?

17 A. 應該咁講，Edward Mok冇通知我，但係我唔清楚佢有冇通知我嗰個area
18 嘅frontline團隊。

19 Q. Am I right to say that if Edward Mok had informed your
20 frontline staff -- and by "frontline staff", according
21 to the organisation chart, that is described as the
22 foreman or the supervisor; right?

23 A. 係，仲有superintendent。

24 Q. Superintendents. They would have reported to you;
25 right?

- 1 A. 你係報告--
- 2 Q. The cutting --
- 3 A. 關於報告邊類事？
- 4 Q. The cutting of the threaded part of a rebar.
- 5 A. 個問題就係冇人report過畀我聽呢件事。
- 6 Q. Mr So, on the basis of your answers earlier, am I right
7 to say that there was actually -- or you are not aware
8 that there were actual inspection of the reinforcement
9 bar layer by layer on site?
- 10 A. 逐層檢查呢樣我知，但係你話有冇一樣document出嚟，呢個我真係唔清楚。
- 11 Q. So, to your knowledge, by layer-by-layer inspection,
12 what do you know about the details of such inspection?
13 What do they see, what do they check; do you know?
- 14 A. 我知道佢哋會--假設可能叫做有B6或者B5咁喇，佢會完成咗B6浸嘅鐵，睇
15 清楚鐵嘅數量啱唔啱、spacing啱唔啱、螺絲頭有冇扭好，跟住先會再上
16 下一浸。
- 17 Q. And by whom such inspection was carried out?
- 18 A. 通常都係我哋禮頓嘅工程師去約地鐵嗰面嘅工程師或者inspector，我唔清楚
19 佢係咩position，但係有約地鐵joint inspection。
- 20 Q. So what you have just said, is that the final inspection
21 that you mentioned earlier?
- 22 A. 頭先嗰個係最終檢查之前係會做嘅，呢個係一個流程，係可能去到所有嘅
23 rebar紮好咗之後，before落石屎之前就係我所講嘅final inspection。
- 24 Q. Mr So, I would like to move on to another topic.

1 Mr Joe Cheung of Fang Sheung, I believe, last week told
2 the Commission that when the couplers embedded in the
3 diaphragm wall were exposed by a process called
4 hydro-demolition process, a significant number of
5 couplers will have been damaged. Are you aware of that
6 phenomenon?

7 A. 除咗用呢個hydro-demolition去expose coupler之外，我哋另外仍然
8 都用人手，用hand-jack去打出，兩個方法都有嘅。

9 Q. Mr So, my earlier question is whether you are aware of
10 the fact that after the couplers were exposed by way of
11 the hydro-demolition process, a significant number of
12 couplers were damaged?

13 MR PENNICOTT: Sir, I'm sorry, if the question is put on the
14 basis that a "significant number" of couplers will have
15 been damaged, I think we ought to be given an evidential
16 reference to that, because I'm not convinced that that's
17 my own recollection, but I stand to be corrected.

18 CHAIRMAN: No, I think you're right.

19 COMMISSIONER HANSFORD: And is there evidence they were
20 damaged by the hydro-demolition process, or wasn't it
21 the jackhammer process?

22 MR PENNICOTT: That's the point, yes, from my recollection
23 of the evidence.

24 COMMISSIONER HANSFORD: There are two points. One is about
25 how significant, and one is what caused the damage --
26 isn't it? Aren't there? Am I right?

1 MR PENNICOTT: Yes, sir. My recollection -- and as I say
2 I stand to be corrected because I've got a lot to
3 remember -- is that yes, he accepted that the damage
4 would certainly be caused by the breaker.

5 COMMISSIONER HANSFORD: Correct.

6 MR PENNICOTT: But using the hydro-demolition process,
7 whilst it might damage one or two couplers, would not
8 ordinarily damage the couplers. That was my
9 recollection. But as I say, I stand to be corrected.

10 CHAIRMAN: No, that's my firm recollection, that the hydro
11 system was much more merciful on couplers than the hand
12 system of hacking and chipping.

13 MR PENNICOTT: Yes.

14 COMMISSIONER HANSFORD: That's what I understood.

15 MR CHOW: Mr Chairman and Professor, my recollection is that
16 actually the evidence from Mr Cheung of Fang Sheung is
17 that after the couplers were exposed, almost every
18 single time there would be quite a number of couplers
19 damaged, but given some time I would be able to locate
20 the evidence where this is.

21 I'm not too concerned but I'm fine with somehow
22 modifying my question a little bit, in order not to
23 waste time.

24 CHAIRMAN: Yes, of course.

25 MR CHOW: Mr So, are you aware of the fact that the exposing
26 of the couplers process would result in some damages to

1 the couplers; are you aware of that fact?

2 A. 我知道。

3 Q. Do you accept that in those situations, it was
4 Leighton's responsibility to fix or make good those
5 couplers, so as to enable Fang Sheung to continue with
6 the steel fixing work?

7 A. 同意，因為contract係唔關泛迅事㗎嘛。

8 Q. In those situations Leighton would deploy its own
9 workers to take care of the remedial work; is that
10 right?

11 A. 係。

12 Q. Am I right to say that at that time, Leighton has in
13 fact a team of workers at its disposal, and whenever
14 there is work to be performed by Leighton, then Leighton
15 would deploy those workers to take care of that work?

16 A. 可以咁講。

17 Q. Do you know whether those workers were directly employed
18 by Leighton or provided by a sub-contractor on a daywork
19 basis?

20 A. HUH裏面應該係大部分係daywork labour㗎嘅。

21 CHAIRMAN: Supplied by a sub-contractor?

22 A. 正確。

23 MR CHOW: Rankine; is that right?

24 A. 應該唔止一間。

25 Q. So there was more than one sub-contractor supplying

1 daywork labour to Leighton?

2 A. 冇錯，因為嗰陣時打--即係用電炮expose coupler都係應該係第二間嚟嘅。

3 Q. Can you recall how many different sub-contractors were
4 there in total which supplied daywork labour to
5 Leighton?

6 A. 你嘅意思係成個1112嘅contract吖，定係淨係HUH呢個location?

7 Q. Perhaps only for HUH contract and during the period from
8 August 2015 to April 2016. Can you recall how many
9 different sub-contractors in total that have supplied
10 daywork labour to Leighton?

11 A. 如果有記錯，應該係三間。

12 Q. And these daywork labour supplied by these
13 sub-contractors, when they work on site, what kind of
14 uniform, or if they wear uniform, what kind of uniform
15 did they wear?

16 A. 呢個我都唔清楚，因為我哋--雖然我哋禮頓係有派制服畀咁多個分判商，但
17 係當然佢選擇着定唔着定係着其他，呢個我真係唔知。

18 Q. Earlier, we have been talking about couplers being
19 damaged after the hacking off or hydro-demolition
20 process. Do you recall that?

21 A. 記得。

22 Q. You also accepted that for those damaged couplers, it
23 was Leighton's responsibility to fix it; correct?

24 A. 正確。

25 Q. Do you know how -- perhaps, first of all, were they

1 fixed by these daywork labours supplied by the various
2 suppliers or sub-contractors?

3 A. 如果個coupler係damage咗，肯定就係我哋啲daywork labour去
4 expose出嚟，成個expose出嚟，至於你話去--即係擰番出嚟，換番個
5 新上去，我真係唔記得咗係邊個做。

6 Q. You may not remember who did it, but you would accept
7 that it would not have been Fang Sheung's workers who
8 replaced the couplers; right?

9 A. 我唔敢肯定我哋會唔會另外出個order畀泛迅去換，即係outside咗佢
10 contract以外嘅嘢，呢個我唔敢肯定，但係expose出嚟就一定係我哋
11 嘅daywork labour去做嘅。

12 Q. So you say you are not sure, perhaps a separate order
13 was given to Fang Sheung to carry out the replacement
14 work, but outside its original scope of work; right?

15 A. 呢個可能性有機會，但係因為我真係唔記得咗。

16 Q. To your knowledge, has this kind of arrangement been
17 ever done?

18 A. 乜嘢安排？

19 Q. Giving extra order to Fang Sheung to carry out the
20 replacement of the damaged couplers.

21 A. 有可能，因為可能drawing上有啲改動，咁變--係outside咗佢之前落
22 contract嗰份圖，呢個extra嘅嘢，我哋可能engineer嗰面就要出番
23 個instruction畀佢囉。

24 Q. But that would be variation work; is that right?

1 A. 係，係。

2 Q. But just now I was asking about the replacement of the
3 damaged couplers during the exposure process, so that
4 would not be a variation, would it?

5 A. 工作範圍有變係泛迅咁，我哋咁，定係？

6 Q. Perhaps I will ask again. In relation to those damaged
7 couplers, they have to be replaced. To your knowledge
8 or from your recollection, has Fang Sheung ever been
9 given extra order, paid extra, to carry out the
10 replacement work?

11 A. 就於呢個coupler嘅，有冇出過，我真係冇印象，亦都唔記得。

12 Q. Are you aware that in relation to the problem that
13 Fang Sheung encountered, one of those problems is that
14 after exposing the couplers, some of them were closely
15 placed to such an extent that it is impossible to screw
16 in the reinforcing bar. Are you aware of that problem
17 at the time?

18 A. 我清楚應該係除咗話coupler有damage咗之外，另外就有啲係可能個
19 angle嗰個角度嘅問題。

20 Q. What do you mean by "issues about the angles of the
21 couplers"?

22 A. 即是我哋喺連續牆露咗之後，個coupler可能唔係一個水平線出嚟，可能偏
23 左、偏右、偏上、偏下。

24 Q. How was this kind of problem rectified by whoever you
25 engaged to carry out the rectification work?

1 A. 呢個問題通常我哋解決唔到嘅，係交番畀我哋engineer去同--可能要同啲
2 design team嘅人士去discuss。

3 Q. But surely, by now, a problem like that would have been
4 dealt with, because the slab has been cast. So, from
5 your recollection, what sort of remedial work had been
6 carried out to deal with this kind of problem?

7 A. 我記得就係鑽窿種鐵嘅。

8 Q. To your knowledge, would Leighton's workers occasionally
9 screw in the threaded bars into the couplers before
10 handing it back to Fang Sheung?

11 A. 你嘅意思係咪將螺絲杆擰入個coupler度?

12 Q. 係。

13 A. 呢個肯定唔會。

14 Q. Mr So, can I ask you to look at a few photographs
15 disclosed by Mr Jason Poon. Bundle D1, page 227.

16 Mr Joe Cheung of Fang Sheung said the workers that
17 we see in the photos are unlikely to be Fang Sheung's
18 workers. Do you have any idea who they work for?

19 A. 正如我剛才話齋，其實靠呢個咁嘅外表，我哋真係好難分辨究竟佢係邊一個
20 分判商嚟或者係我哋承建商。

21 Q. Do you recognise the uniform that they were wearing?
22 Who provides those uniforms?

23 A. 藍色嗰件，我就唔清楚，紅色嗰件應該係禮頓provide嘅。

24 Q. So, if the red uniform were provided which Leighton, on
25 what basis do you say you are not sure that at least the

1 worker wearing the red uniform were not Leighton's
2 worker?

3 A. 因為紅色衫或者紅色帽，我哋喺禮頓裏面嚟講，係代表一個中文叫做「交通
4 督導員」，“banksman”，其實任何一個分判商佢嘅工人或者係佢嘅員工
5 上完呢個course，我哋就provide 呢樣嘢畀佢，所以我都唔知點分辨究
6 竟佢係禮頓嘢，定係分判商。

7 Q. While we are still on this photo, Mr Rodgers gave
8 evidence that he was 100 per cent sure that the workers
9 that appear in these photos were Leighton's workers. Do
10 you have any response to that?

11 A. 可能佢嘅伙記佢認到啫，咁本人就真係認唔到喇。

12 Q. Thank you.

13 Can I now ask you to go to the next photo, 228. Can
14 you tell whose worker is this person, from this photo?

15 A. 你嘅意思係嚟自分判商定係禮頓？

16 Q. Yes.

17 A. 冇可能認得到係嚟自分判商定係禮頓。

18 Q. How about those that appear in photo 232?

19 A. 呢張相，單憑外表都係認唔到，只不過佢做緊擰螺絲呢個動作，當時我估計
20 佢係泛迅工友啫。

21 Q. Mr So, do you agree that irrespective of who they work
22 for, these workers were there under the permission of
23 Leighton?

24 A. 「畀批准」嘅意思係？

25 Q. We have heard evidence about the control of entrance and

1 exit of the site, and we have heard evidence about
2 attending induction course before someone is allowed to
3 work on site. And you were aware of this system, right,
4 being implemented, or having been implemented on site?

5 A. 清楚，有呢個制度。

6 Q. So am I right to say that these workers being able to
7 perform what they appear to be performing in this photo,
8 they must have been under the permission of the main
9 contractor, Leighton?

10 A. 你可以咁講，因為如果佢要完成咗禮頓嘅induction training，佢先至
11 可以入嚟地盤開工，你可以咁講。

12 CHAIRMAN: Sorry, could I just interrupt again -- I do
13 apologise. If you have a look at this photograph, you
14 are saying it appears to show people, or two men,
15 screwing the reinforced steel bars into couplers?

16 A. 正確。

17 CHAIRMAN: Okay. And in fact you can see a wrench, a little
18 red wrench down there, in front. Can you see it?

19 A. 見到。

20 CHAIRMAN: And that would sometimes be used to help them
21 screw or turn the rebars; correct?

22 A. 正確。

23 CHAIRMAN: If you have a look, actually, you can see on the
24 left-hand side a yellow hose, or what appears to be
25 a yellow hose; do you see that?

1 A. 見到。

2 CHAIRMAN: Then if you go back to the photograph of the
3 person cutting the thread -- there we are.

4 MR CHOW: 228.

5 CHAIRMAN: If you make that photograph smaller -- there we
6 are -- do you see a yellow hose just at the top?

7 A. 係。

8 CHAIRMAN: And the photographs were taken almost -- they
9 were taken within seconds of each other; okay? I'm just
10 wondering, why would there be somebody seemingly -- and
11 I put it no higher than that -- seemingly very close to
12 the other two men who are putting rebars into
13 couplers -- why would there be somebody very close by
14 cutting the threaded end or about to cut the threaded
15 end off a reinforced steel bar?

16 A. 呢個我都唔清楚。

17 CHAIRMAN: No. But from what you've said, there would be no
18 reason for anybody to do it, and if you saw this
19 happening what would you have done?

20 A. 如果即場見到呢個人咁樣做呢樣嘢，我就會捉埋佢嘅管工，甚至乎佢嘅老細，
21 我就會send呢個工友off site，因為呢件係一個好嚴重嘅事件。

22 CHAIRMAN: Yes. But would you agree that on the face of
23 it -- and I don't put it any higher than that -- what
24 these two photographs appear to show is somebody on site
25 about to cut into the threads of a reinforced steel bar,

1 and doing so in close proximity to a couple of other
2 workers who are actually putting steel bars into
3 couplers?

4 A. 基於呢兩張相，係可以咁樣推論。

5 CHAIRMAN: Then you might say to yourself: If this steel bar
6 that's being cut is going to be put into the wall as
7 well, could it be perhaps one of the couplers there was
8 not in good order, and they decided to just cut the
9 thread a little, before putting that in, to make it
10 work? I appreciate it's not really a question. My
11 apologies for putting it to you. That's more a comment,
12 I think, than anything else.

13 But on its face, would you agree it's difficult to
14 find any permissible reason for what this man is about
15 to do?

16 A. 可以咁講。

17 CHAIRMAN: And yet he appears to be doing it in the open?

18 A. 睇張相就係。

19 CHAIRMAN: And from your evidence, as I understand it, there
20 would be inspectors there who would be keeping an eye on
21 all of this; correct?

22 A. 係呀，我每個位置都有我嘅管理團隊supervision team喺度。

23 CHAIRMAN: And yet the inspectors would appear to be
24 allowing it to happen, if they're seeing it?

25 A. 如果當日呢一個時段、呢個時間我嘅管理團隊有其中一個人企喺度嘅話，咁

1 就係問題喇，但係我唔清楚呢段時間我仲有冇我嘅管理團隊喺呢個area附
2 近，因為呢個area我而家暫時都未清楚係邊個area。

3 CHAIRMAN: But that's the point I'm making, that either it
4 should have been stopped or your supervision people were
5 just not there? Would you agree?

6 A. 同意。

7 COMMISSIONER HANSFORD: My only supplementary question to
8 Mr So is: what time did your supervision team finish?

9 CHAIRMAN: A good point.

10 A. 正常我哋工作時間係8至6。

11 COMMISSIONER HANSFORD: And these photos were taken after
12 6 pm. Both of these photos, if you look at the bottom
13 of the photos, I think I'm right in saying that both of
14 them were after 6 pm?

15 A. 我見到個時間係over咗6點。

16 CHAIRMAN: And are you aware of the fact, from what you've
17 learnt, that Mr Jason Poon alleged that the workers were
18 cutting rebars after normal working hours, that is after
19 6 o'clock; they were taking that opportunity to do so?
20 Had you ever heard anything to that effect?

21 A. 我有聽過。

22 MR CHOW: Mr So, earlier you mentioned you spent about
23 70 per cent of your time on site. Am I right to say
24 that what you mean by that is that you spent about
25 70 per cent of your time working around the site,

1 instead of staying in the site office?

2 A. 正確。

3 Q. So presumably your subordinates, the foremen and the
4 site supervisor, would have spent even more time
5 on site, running around the site; is that correct?

6 A. 係呀，佢哋suppose應該係full-time on site。

7 Q. So full-time staying outside the workplace and
8 overseeing the work being carried out; is that what you
9 mean?

10 A. 你可唔可以再問一次？

11 Q. Full-time on site means not staying in the site office
12 but going around various places on site, looking at the
13 works being carried out by workers or sub-contractors;
14 is that what you mean?

15 A. 佢哋--我“full-time”嘅意思就係話佢哋通常喺番佢哋嘅管轄範圍裏面
16 嘅附近，當然食飯或者係收工時間就會返番去佢哋嘅office。

17 CHAIRMAN: Is that an opportune moment?

18 MR CHOW: Mr Chairman, I believe that I may only have a few
19 minutes, then I will be finished.

20 CHAIRMAN: All right.

21 MR CHOW: So I wonder whether -- I'm entirely in your hands.

22 CHAIRMAN: I'm happy for you to continue.

23 MR CHOW: Thank you.

24 In your statement, you also mentioned about working
25 overtime for yourself; do you recall that?

1 A. 我記得。

2 Q. Am I right to say that whenever there are works or there
3 remain works to be carried out after normal working
4 hours, you would ensure that one of your team or more
5 than one of your team members would stay behind to look
6 after the sub-contractor or the workers who were
7 carrying out the work?

8 A. 如果有需要overtime嘅，係一定會有安排人去做嘅。

9 COMMISSIONER HANSFORD: Sorry, can I just understand that,
10 because I asked you earlier what time your supervisors
11 left, and I thought you told me they would leave at
12 6 pm. But are you now saying that if sub-contractors
13 were working beyond 6 pm, they would stay? What is the
14 answer? Would they stay if sub-contractors were working
15 after 6 pm, or would they go at 6 pm?

16 A. 正常時間，頭先我解釋畀你聽係正常時間8至6，若果我哋當日--因為我哋每
17 一日都有個progress meeting嘅，傾咗有需要開OT，我哋就要arrange
18 個supervision去監察住佢哋。

19 COMMISSIONER HANSFORD: So could workers, sub-contract
20 workers, be working on the site with no supervisors
21 being on the site? Is that a possible situation? Did
22 that ever happen?

23 A. 如果正常係我哋planning以內嘅工作，一定有supervision，當然佢自己
24 匿埋或者唔知點樣，因為我哋控制唔到，佢係絕對地有權去入番地盤，因為
25 佢有卡，我哋係阻止唔到或者唔知佢幾時會入到地盤嘅，因為佢係正常一個

1 工人。

2 CHAIRMAN: No, but we're talking here about bar fixers
3 working openly on site after 6 o'clock at night, as per
4 the photographs.

5 COMMISSIONER HANSFORD: Yes, exactly. So if you had
6 a situation of people had been bar fixing all day, and
7 6 o'clock comes along, and the bar fixers are continuing
8 working on site, would the supervisors leave or would
9 they stay?

10 A. 頭先我已經解釋咗，如果佢係plan咗係要overtime嘅，我哋啲supervisor、
11 科文會留低嘅，但係如果我哋根本就冇plan過嗰個area係需要overtime嘅，
12 呢個我哋真係唔知佢幾時會留低。

13 CHAIRMAN: So you go?

14 A. 如果當日冇人--因為我哋overtime，我哋需要申請一張permit，如果當日
15 係冇人需要申請overtime，我就安排唔到我嘅supervision留低，我哋咪
16 收工。

17 CHAIRMAN: All right. So you would go. So a chance is
18 there, if a sub-contractor is a bit under pressure,
19 telling his people to keep on, but it hasn't been
20 pre-arranged, that supervision would head off home?

21 A. 正確。

22 MR CHOW: Mr So, is it really possible that the
23 sub-contractor made his own decision to stay behind
24 without informing your team?

25 A. 正常就唔會，因為嗰個system其實好多人人都知道嘅。

1 Q. So, to your knowledge, has it ever happened that
2 a sub-contractor sort of continues to work without
3 informing the main contractor, or sneaks back onto site
4 after 6 pm, without the supervision of the main
5 contractor? Has it ever happened, to your knowledge?

6 A. 我而家記唔到有冇呢類事件發生。

7 Q. One last question. Given that now you are aware of the
8 previous bar cutting incidents, do you have any idea as
9 to why such incidents took place?

10 A. 知唔知點解要剪鐵--剪螺絲頭?

11 Q. Correct.

12 A. 我唔知道點解佢哋要剪螺絲頭。

13 MR CHOW: Mr Chairman, I have no more questions. Thank you.

14 CHAIRMAN: All right. Thank you very much.

15 Yes?

16 MS CHONG: I have two questions.

17 CHAIRMAN: All right. Let's ask them.

18 Cross-examination by MS CHONG

19 MS CHONG: You said you were responsible for the work
20 progress of this project and you would discuss with the
21 sub-contractors and also your workers as to the work
22 progress.

23 Is it the case that Fang Sheung had -- there is no
24 issue of Fang Sheung falling behind the work schedule of
25 Leighton during this project?

1 A. 唔可以絕對咁講，因為有--你要bay by bay 講，因為有機會出現可能呢個
2 bay係冇遲，但係下一個bay會有遲。

3 Q. But with the arrangement of Leighton, Fang Sheung was
4 always able to comply with the work schedule of Leighton
5 as assigned by Leighton; do you agree?

6 A. 同意，因為我哋同佢agree咗個resource要加幾多，佢有加到咪可以meet
7 到我哋嘅progress囉。

8 Q. And after the arrangement of Leighton, there was not
9 much -- is it fair to say that there was not much
10 pressure from Leighton, pressing Fang Sheung to hurry up
11 with their work?

12 A. 我哋叫佢加人，要喺某個時間完成屬唔屬於一個pressure?

13 Q. But what I meant was Fang Sheung was able to comply with
14 those work schedules as designed or laid down by
15 Leighton, after all the arrangements of Fang Sheung with
16 your supervisor; is that correct?

17 A. 開頭有段時期係唔可以咁講，因為我哋都接受--接收到地鐵嗰方面投訴。

18 Q. Yes.

19 A. 係喇，但係打後係有改善嘅。

20 Q. "Initially", you are talking about what time?

21 A. 我諗EWL開頭初期嗰兩、三個月嘅--兩個零月喇，我估，實際日子我真係
22 唔記得太清楚。

23 Q. Is it early 2015 or 2014, or any time; can you recall?

24 A. 應該係大約2015年年中嘅時間嘅喇。

25 Q. That is around June 2015?

1 A. 差唔多嗰個時間，因為我記得開首做係應該係area C2、C3嘅，嗰段時間
2 就係因為佢哋每個禮拜都有個walk，係我哋嘅senior同埋地鐵嘅senior
3 行，咁收咗幾次投訴就係話泛迅--even泛迅或者係China Tech，都係話
4 嗰個resource唔夠嘅。

5 Q. But this problem, as you said, improved after a few
6 months, is it, after --

7 A. 正確，正確，正確。

8 Q. So by what time would this problem have been improved?

9 A. 其實我哋每一日嗰個progress meeting都有keep住去monitor呢個問題，
10 當然可能佢每一個分判商，我哋要佢加啲resource，即係even人又好，機
11 又好，當然佢唔係即刻加得到，可能三、幾日或者要安排先至做得到。至於
12 你話幾時正式開始有個improvement，我真係記唔到個日子。

13 Q. But it's fair to say that after, say, a few months,
14 Fang Sheung was able to comply with all the work
15 schedule as laid down by Leighton?

16 A. 可以咁講。

17 Q. As to the overtime work, it's our case that whenever
18 Fang Sheung has to work overtime, there would be --
19 definitely there would be a supervisor from Leighton,
20 supervising the workers. Do you agree? It can't be
21 that Fang Sheung was on the site working themselves,
22 without the supervision of anyone from Leighton.

23 A. 唔可以淨係話泛迅，總之所有分判商需要overtime，一定要有禮頓嘅監察
24 人員在場。

1 Q. And it can't be that the sub-contractors, such as
2 Fang Sheung, would make their own decision to stay
3 overtime on the site, without informing the main
4 contractor, such as Leighton. It can't be that case,
5 that Fang Sheung workers can stay of their own volition,
6 without telling Leighton, or sneak back to the site to
7 work without informing the Leighton workers?

8 A. 正常就唔會發生。

9 Q. Yes, under normal circumstances.

10 One more question. Talking about this replacement
11 of coupler issue, it's our case that this replacement of
12 damaged couplers was never the contractual duty of
13 Fang Sheung, and as a result of such Fang Sheung was
14 invited by Leighton to return a quotation on this
15 additional job, but that was never returned -- the
16 quotation was never returned by Fang Sheung to Leighton.
17 Do you know that?

18 A. 我唔清楚，我頭先只不過話我唔知有冇機會我哋嘅engineer畀咗個site
19 instruction泛迅去換嗰粒嘢啫。

20 Q. And as a result of this piece of work falling outside of
21 Fang Sheung's work duties, China Technology was
22 approached then by Leighton to give a quotation; do you
23 know this?

24 A. 嗰個應該係，我有記錯，係expose啲coupler嘅。

25 Q. And throughout the contract, throughout this contract,

1 it was never the contractual duty of Fang Sheung to
2 replace those damaged couplers; do you know this?

3 A. Original contract, 係。

4 Q. And there was no additional contract signed on this
5 replacement of couplers?

6 A. 我頭先講original以外, 我唔知會唔會有啲site instruction, 但係
7 呢個唔係我確認到嘅嘢, 因為我估計會唔會有呢件事情發生啫。

8 Q. So outside the original contract you cannot give any
9 evidence on --

10 CHAIRMAN: I think whether this gentleman does or doesn't
11 know is not really the point. I think the point is what
12 was in fact objectively the case, which can be shown on
13 the documentation, I'm sure.

14 MS CHONG: In that case, I have no further questions.

15 CHAIRMAN: Any --

16 MR BOULDING: Sir, I might have a couple of questions as
17 a result of something the witness has said today. I see
18 it's 5.20 and I would appreciate the opportunity to take
19 instructions.

20 CHAIRMAN: No, that's absolutely fine. Of course,
21 Mr Boulding.

22 MR BOULDING: Thank you very much.

23 CHAIRMAN: So we will adjourn now.

24 I do regret that we have to ask you to come back
25 tomorrow, okay, 10 o'clock in the morning.

26 WITNESS: Okay.

1 CHAIRMAN: And because you are in the middle of giving your
2 evidence, you are not allowed in law to discuss your
3 evidence overnight, with anybody.

4 WITNESS: Understand.

5 CHAIRMAN: Okay, good. Thank you very much.

6 (5.21 pm)

7 (The hearing adjourned until 10.00 am the following day)

8

9

	INDEX	
		PAGE
1		
2		
3	MR ANTHONY PETER ZERVAAS (on former oath)	1
4	Cross-examination by MR KHAW (continued)	1
5	Questioning by THE COMMISSIONERS	20
6	Re-examination by MR WILKEN	23
7	Questioning by THE COMMISSIONERS	28
8	(The witness was released)	29
9	MR IAN NOEL RAWSTHORNE (affirmed)	32
10	Examination-in-chief by MR WILKEN	32
11	Examination by MR PENNICOTT	33
12	Cross-examination by MR SO	58
13	Cross-examination by MR KHAW	71
14	Cross-examination by MR BOULDING	98
15	Re-examination by MR WILKEN	102
16	(The witness was released)	106
17	MR SO YIU WAH, GABRIEL (affirmed in Punti)	107
18	Examination-in-chief by MR SHIEH	107
19	Examination by MR PENNICOTT	108
20	Cross-examination by MR KHAW	126
21	Cross-examination by MR CHOW	126
22	Cross-examination by MS CHONG	155
23		
24		
25		