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| <p>1 Tuesday, 29 January 2019</p> <p>2 (9.31 am)</p> <p>3 MR SO: May it please you --</p> <p>4 CHAIRMAN: Sorry, Mr So. There is just one small matter</p> <p>5 I should mention, just for clarification if nothing</p> <p>6 else.</p> <p>7 There was an article in the media this morning in</p> <p>8 which I am quoted, not in respect of what I said in</p> <p>9 these precincts but what I said outside and I feel I do</p> <p>10 need to just clarify that situation.</p> <p>11 You will recall that yesterday, within the</p> <p>12 Commission, I said that the Commission would only</p> <p>13 consider evidence that was placed before it within the</p> <p>14 Commission. As Prof Hansford and I were leaving for</p> <p>15 lunch yesterday, at the back gate, we were approached by</p> <p>16 five or six reporters. We don't know from where. They</p> <p>17 asked me about a media article related to tests that</p> <p>18 have apparently been done in respect of the couplers.</p> <p>19 Obviously wishing to be civil, entirely, I answered</p> <p>20 to the effect that I had already that morning made it</p> <p>21 clear that the Commission would only consider evidence</p> <p>22 that came before it formally within these precincts.</p> <p>23 I was then asked, and I can't remember exactly,</p> <p>24 something to the effect of, "But there are suggestions</p> <p>25 that the tests proved that earlier tests were not</p> | <p>1 I don't know whether Mr Boulding or Mr Khaw wish to</p> <p>2 say anything further.</p> <p>3 MR BOULDING: Yes. Thank you very much, Mr Pennicott. He</p> <p>4 is absolutely right. A very, very thick proposal went</p> <p>5 out yesterday for government's consideration. I don't</p> <p>6 know whether you have had the opportunity to see that,</p> <p>7 but I am told that there was a meeting with government</p> <p>8 yesterday. We are still targeting the date of</p> <p>9 1 February for the tests. We would like to do that with</p> <p>10 government's approval.</p> <p>11 If that approval is it not forthcoming very, very</p> <p>12 soon, then obviously Chinese New Year will be upon us,</p> <p>13 and at that stage the earliest likely date will be</p> <p>14 8 February.</p> <p>15 But I emphasise that MTR is hoping to conduct the</p> <p>16 tests on 1 February with the government approval. So it</p> <p>17 does appear to me that the ball is very firmly in</p> <p>18 government's court.</p> <p>19 Thank you.</p> <p>20 MR KHAW: Yes, Mr Chairman and Professor. We received the</p> <p>21 proposal, I think it consisted of more than 50 pages,</p> <p>22 regarding the suggested plan, yesterday evening at</p> <p>23 around 5.30 or 6 o'clock. That was I think the first</p> <p>24 proposal, actually the first correspondence, we received</p> <p>25 from MTR regarding the test proposal since Mr Boulding</p> |
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| <p>1 conclusive", or something to that effect, and I then</p> <p>2 replied to the effect, "Sorry, I can say no more, I can</p> <p>3 only speak within the Commission", and then I gently</p> <p>4 made my way past.</p> <p>5 I wish to state that. Absolutely nothing happened.</p> <p>6 But more important I don't wish it to be assumed by</p> <p>7 anybody that either Prof Hansford or myself chose any</p> <p>8 particular media outlet to which an interview should be</p> <p>9 given. It happened at the steps of the Commission and</p> <p>10 there was a polite conversation, which should always be</p> <p>11 the case, but nothing more than that was said.</p> <p>12 Thank you very much.</p> <p>13 MR PENNICOTT: Sir, before Mr So stands up, and on the</p> <p>14 question of tests, I understand from the discussion that</p> <p>15 Prof Hansford in particular had with Mr Boulding and</p> <p>16 Mr Khaw yesterday afternoon that we had invited the</p> <p>17 government and the MTR to give us an update this morning</p> <p>18 on the present state of play with regard to the tests</p> <p>19 that we understand the MTR are keen to carry out.</p> <p>20 Overnight, I have received from the MTR, the MTR's</p> <p>21 solicitors, a letter dated 28 January, that's yesterday,</p> <p>22 from the MTR to the RDO of the Highways Department,</p> <p>23 attaching the proposed testing plan, as I understand it,</p> <p>24 which runs to a number of pages. That letter invites</p> <p>25 RDO to comment at its earliest convenience.</p> | <p>1 talked about the tests on Day 44 of the hearing.</p> <p>2 Certainly the government will liaise with the BD as</p> <p>3 to what further details we need and how we are going to</p> <p>4 review the proposal. We hope that we can have more</p> <p>5 instructions later today, if possible, but if not we</p> <p>6 will certainly keep the Commission informed of the</p> <p>7 developments.</p> <p>8 We note the target date proposed by MTR, but since</p> <p>9 it was a rather late document that we received</p> <p>10 yesterday -- but we still hope to achieve that, yes.</p> <p>11 CHAIRMAN: Good. Thank you very much.</p> <p>12 MR PENNICOTT: Sir, I don't think much more needs to be said</p> <p>13 about that. I think Mr Khaw has indicated that</p> <p>14 government will cooperate, with a view, I hope, to</p> <p>15 achieving the target date that MTR wishes to achieve,</p> <p>16 that is the 1st.</p> <p>17 I would point out that, in my respectful submission,</p> <p>18 the Commission would have power to direct these tests to</p> <p>19 be carried out, if there is any doubt about them being</p> <p>20 carried out and if there is any significant delay, but</p> <p>21 of course I don't think we have reached that stage yet.</p> <p>22 But I do, in my submission, say that if push comes to</p> <p>23 shove and the Commission really wants these tests to be</p> <p>24 carried out sooner rather than later, then I will be</p> <p>25 suggesting that you use your powers to so direct.</p> |

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| <p>1 COMMISSIONER HANSFORD: Clearly, these tests and the results 2 from these tests are rather important for our 3 conclusions, and so we would like to see that 4 information as soon as possible. 5 MR PENNICOTT: Yes, sir. 6 CHAIRMAN: Could I just add to that by saying that as 7 I understand my mandate, that is the mandate of the 8 Commission of Inquiry and on my basis directing matters 9 as to law, this Commission's mandate expires when we 10 hand in the report to the Chief Executive, if it is 11 a final report, as opposed to an interim report. 12 We wish it, insofar as is possible, obviously for 13 matters of finality, that it is a final report, but at 14 this moment in time not everything is finalised, and if 15 it is necessary we will obviously have to liaise with 16 counsel to the Commission after the ending of 17 proceedings today and, if necessary, seek submissions 18 from the various counsel here today on any matters that 19 might arise and in respect of which we, that is 20 Prof Hansford and I, believe fairness dictates that we 21 should receive various submissions so that all sides are 22 heard. 23 In simple terms, I think what that means is that 24 when submissions are finished today, we hope there won't 25 be any further need to call upon you, but we may well</p> | <p>1 opening-up exercise which was exhibited in our 2 opening-up bundles, there were three incidents which 3 I wish to highlight which would not be immediately 4 apparent from the data. 5 First, up until 26 January 2019, 11 couplers were 6 found unconnected, seven of which were within the test 7 location. 8 Second, on 7 January 2019, one rebar and one coupler 9 were found to be unconnected. There was a small gap 10 between the rebar and the coupler. On that rebar, there 11 were only two to three threads on the bar. 12 The third incident: on 16 January 2019, yet another 13 rebar and a coupler were found unconnected and on that 14 rebar only three to four threads were on the bar. 15 Today is Day 46 of the hearing, and in my respectful 16 submission, instead of saying that Leighton has no case 17 to answer, China Tech boldly suggests they simply have 18 no reasonable defence. 19 Chairman and Commissioner, my oral closing address 20 will be largely following the structure of my written 21 closing. I only wish to address points that seem to 22 have been in dispute with other parties and I do not 23 wish to merely regurgitate what has already been written 24 down. I wish to first lay down a marker or indeed maybe 25 a declaration that insofar as I myself am concerned or</p> |
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| <p>1 have to. All right? 2 So, to use military terms, you don't stand down, you 3 don't go on leave, you're still in barracks; all right? 4 Thank you. 5 Closing submissions by MR SO 6 MR SO: Good morning, Mr Chairman. Good morning, 7 Mr Commissioner. 8 I start my closing address in thanking this 9 Commission for the indulgence that it grants me and 10 China Tech an extension of time in making the closing 11 address. I trust that with that extension I will not 12 exceed my time and if I do I'm sure someone will stop 13 me. 14 On Day 1 of this hearing, counsel for Leighton 15 indicated that it was Leighton's stance that based on 16 all evidence of China Tech, there was simply, in 17 Leighton's position, no case to answer. On Day 1 of 18 this hearing, counsel for MTR also stated that there 19 were only a few isolated incidents of rebar cutting; 20 they were all spotted by the magnificent supervisory 21 system, they were all rectified on the spot. On Day 1 22 of this hearing, counsel for Fang Sheung stated that 23 there would simply be no benefit for Fang Sheung workers 24 to cut the rebars. 25 We have had the opening-up exercise. Besides the</p> | <p>1 as far as China Tech is concerned, both myself and 2 China Tech do not have the slightest intention to be 3 disrespectful to this Commission or to counsel for the 4 Commission. On a personal note, I hope to be pardoned 5 if I, in the course of my submission, have to disagree 6 with the submissions of counsel for the Commission. 7 That is an important matter, because both myself and 8 China Tech do not wish to be perceived, or indeed wish 9 to clarify that if we were so perceived, as undermining 10 the integrity or independence of this Commission. 11 I first start with going through the terms of 12 reference and the mandate that Mr Chairman has just 13 mentioned, which is important to this Commission. That 14 is in tab 1 in my bundle and it is in bundle A1, 15 page A1. 16 The Commission is certainly concerned with, in 17 paragraph (a): 18 "... the facts and circumstances surrounding the 19 steel reinforcement fixing works, including but not 20 limited to", I stress, "those works ... that have given 21 rise to extensive public concern about their safety ...; 22 ... the facts and circumstances surrounding any 23 other works which raise concerns about public safety"; 24 and most importantly, we stress: 25 "to ascertain whether the works ... were executed in</p> |

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| <p>1 accordance with the contract." 2 Without doubt, safety is indeed an issue, and we 3 acknowledge perhaps an important issue for the 4 Commission, but certainly this is not the only or sole 5 issue to be addressed. The Commission's scope of 6 inquiry is wide and it would certainly, in our 7 submission, be unwise to self-curtail her own 8 jurisdiction and tie her own hands down upon matters 9 which are clearly within the terms of reference and 10 clearly that concern the public. 11 The Chairman rightly observed yesterday that the 12 public disquiet was over safety. 13 If I may be allowed to add one more point to that: 14 the public is also disquieted about malpractice on the 15 site, and on this note of course malpractice could be 16 a distinct issue to safety. 17 Before hearing factual evidence, China Tech's case 18 was that there was cutting of threaded ends of rebars 19 within Hung Hom Station. That proposition was supported 20 by two different angles, first being that different 21 staff members of China Tech have seen the cutting and/or 22 screwing of cut short rebars with the couplers; and 23 secondly, by analogy, neither MTR nor Leighton nor 24 Fang Sheung was able to spell out who cut the rebars, 25 why they were cutting the rebars, whether those</p> | <p>1 MR SO: Yes. 2 CHAIRMAN: So I took issue with Mr Shieh there, but I think 3 you are now saying that on the evidence as a whole, it's 4 your submission that it must have been widespread. 5 That's different, I appreciate that, because what 6 Mr Poon may say as an individual is one thing. Your 7 submission, on the basis of all the evidence, is 8 another. I do see the difference. 9 MR SO: Yes. I use "widespread" in a loose way, by way of 10 submission. I do not say -- I say "widespread" as 11 opposed to "isolated incidents"; not isolated incidents. 12 CHAIRMAN: Okay, not. 13 MR SO: I use it in that sense. I'm not quoting evidence 14 from what Mr Poon has said in evidence. 15 CHAIRMAN: Good. Thank you very much. That helps. 16 MR SO: Thank you, Mr Chairman. 17 Therefore, it is my submission that reading all the 18 evidence together, not just Jason Poon or China Tech's 19 complaints but together with what we have in front of 20 this Commission -- the NCR, the unsatisfactory 21 supervisory system, the defaulted management system 22 among Fang Sheung, and most importantly, together with 23 the objective opening-up results, with all these 24 together, then we can assess the credibility of Mr Jason 25 Poon and indeed the credibility of witnesses who have</p> |
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| <p>1 particular workers were removed, or whether they had 2 been discovered by MTR, Leighton and Fang Sheung. The 3 situation must be the tip of an iceberg and there would 4 never be only one cockroach in the kitchen. This is 5 a matter of common sense, this is a matter of inherent 6 improbability, the extent of cutting is therefore 7 widespread. 8 It is the submission of China Tech that Leighton has 9 either directed it or acquiesced to that. Apparently 10 this was not accepted by MTR, not accepted by Leighton, 11 not accepted by Fang Sheung; Fang Sheung, that this 12 could not have happened because there was no reason for 13 Fang Sheung doing that. 14 Leighton said that because Jason Poon cannot explain 15 why this happened, what Jason Poon said must be wrong. 16 MTR -- 17 CHAIRMAN: Bear with me just a second. Just a question of 18 clarification, that's all. 19 MR SO: Yes. 20 CHAIRMAN: Yesterday, in conversation with counsel in this 21 Commission, I think it was with Mr Shieh, when he used 22 the word "widespread", I took issue with that and said 23 that my recollection of Mr Poon's evidence was that he 24 said in his evidence that it was calculated and 25 systematic, but he didn't say it was widespread.</p> | <p>1 given evidence for China Tech. 2 I wish to say a few words about the opening-up 3 results. On 5 December 2018, the government accepted 4 the holistic assessment strategy of MTR regarding the 5 platform slabs and diaphragm walls in the Hung Hom 6 Station. As of 26 January -- I understand that in my 7 submission it was earlier, because of course that was 8 submitted last week, but if we keep ourselves updated to 9 26 January -- there were 39 out of 116 coupler 10 assemblies that failed to comply with BOSA's 11 requirement. That has not included the 11 couplers that 12 were found unconnected, but if we included those 13 11 coupler assemblies that were found unconnected to the 14 rebar, it would be 50 out of 127 coupler assemblies 15 failing. And out of that, 26 out of 116 couplers, 16 threaded rebars have a total length of less than 44mm. 17 In that respect, we have prepared an appendix A, which 18 is appended just before the back sheet of the closing 19 submission, which has set out, after given all the 20 benefit of the doubt to the thread, that particular 21 thread has a total length of less than 44mm. For the 22 record, the additional one found to be shorter than 44mm 23 would test 106, 109, 110 and 113. 24 Other than those, there were also 11 couplers which 25 were found simply not connecting to the rebar.</p> |

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| <p>1 I wish to highlight another fact that apparently 2 only arose after the substantial hearing had concluded. 3 There was a letter written by Highways Department to the 4 MTRC, indicating that they have found various 5 deficiencies within the MTR station box. This has been 6 included in tab 3, if that may be turned up. In tab 3 7 it is G16162. 8 If it is more convenient to turn up the main bundle, 9 it is G21/G16160 to G16163. If we go to 16162, this has 10 been found by Highways Department that there was a gap 11 between the column and the soffit of EWL slab, and if we 12 go to the next page, please, this was also new, that 13 there was a void with left-in H-pile at the soffit of 14 the EWL slab. 15 Of course these matters have not yet been responded 16 by MTR. I wish to borrow this sentence used in 17 Leighton's opening submissions: "All these objective 18 facts speak for themselves." 19 There is submission by counsel for Leighton, counsel 20 for MTR, and most regrettably counsel for the 21 Commission, to say there is no evidence that there were 22 indeed systematic and planned cutting of the threaded 23 rebars that has been proven. That, with respect, in 24 China Tech's submission is utterly untrue. Quite the 25 contrary, it is China Tech's respectful submission that</p> | <p>1 inconceivable that anyone would cut short a type A 2 threaded rebar by just a few millimetres. Not only is 3 there no purpose served, but it is also difficult to 4 perform such cutting. A probable explanation" -- this 5 we have put emphasis on -- "for this is that workers may 6 have taken a type B threaded rebar and cut it short to 7 serve the purpose of a type A threaded rebar, which 8 while not recommended is technically possible." 9 I pause there. This position is not suggested by 10 MTR in their opening submission. Quite the opposite. 11 If one recalls Kobe Wong's evidence of MTR -- I need not 12 trouble the Commission to turn that up -- paragraph 92 13 of Kobe Wong's evidence is this: 14 "To be clear, there was no cutting or shortening of 15 the type B threaded end." 16 With respect, to now suggest that this could have 17 happened, MTR is now resiling from her initial position. 18 If I may now just bother the Commission to take 19 a look at a few short excerpts of what was written in 20 the opening submissions by Leighton and MTR, the first 21 being Leighton's opening submission, paragraph 6. 22 I think it's in the very top, "Opening submissions". 23 Paragraph 6, Leighton's position in the opening: 24 "Leighton has submitted evidence from twenty 25 witnesses. They are all clear that, as far as Leighton</p> |
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| <p>1 there is now a mountain of iron-proof evidence to 2 support the complaints made by staff of China Tech, in 3 particular Jason Poon. Without more, witnesses of 4 China Tech could be, just on this point, in my 5 submission, considered as credible. China Tech has 6 accomplished her duty in giving evidence to the 7 Commission. 8 Pausing here, in this regard, I have two 9 observations I wish to make. The first is in response 10 to MTR's closing submissions, paragraphs 84 and 85. 11 I quote in MTR's closing submission, paragraph 84: 12 "Importantly, the results are not suggestive of any 13 systematic/large-scale threaded rebar cutting. In this 14 regard, McQuillan helpfully prepared a spreadsheet 15 reorganising the data into three relevant groupings 16 (ie embedded length, length of bar end and engaged 17 length). Based on his analysis of the results of the 18 PAUT readings, McQuillan concluded that there is 19 generally no indication of threaded rebar cutting. The 20 available evidence and opening-up results mean the 21 likelihood of a large number of failed couplers 22 concentrated in one location is 'extremely remote'. 23 Some of the PAUT results may suggest that the 24 threaded portion of the rebars may be a few millimetres 25 shorter than the usual length of a type A rebar. It is</p> | <p>1 is concerned, there was no cutting of thread, no 2 instructions were given to cut thread and no one was 3 permitted to cut thread. The only exceptions, on 4 Leighton's evidence, relate to: 5 Eight bars found on three occasions in area C of the 6 EWL slab. 7 These were, however, all remedied expeditiously ..." 8 I add an observation here: Leighton did not accept 9 the conversion of type B to type A, which involved 10 cutting. 11 The second excerpt I invite the Commission to take 12 a look at is in MTR's opening submissions, paragraph 88: 13 "In the light of the evidence which is currently 14 before the COI, the situation can be summarised as 15 follows: 16 (a) All of the occurrences (most likely just 5) of 17 trimming down the threaded ends of the rebar occurred in 18 a relatively short period of time, that is August to the 19 end of December 2015; 20 (b) They were discovered during MTRCL's regular site 21 surveillance of the relevant works, which supports the 22 adequacy/effectiveness of MTRCL's supervision and 23 inspection of the works; 24 (c) There is no evidence (and certainly no credible 25 evidence) of the non-compliance being widespread;</p> |

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1 (d) On the contrary, if the non-compliances were as
 2 widespread as he now alleges, it is truly remarkable
 3 that Jason Poon of China Tech never raised the matter at
 4 the time ..."

5 I pause there, making the same observation: MTR did
 6 not accept the conversion of type B to type A. This is
 7 not the position now in the closing submission. Indeed
 8 Paulino Lim's evidence is that the conversion of type B
 9 to type A is highly unrecommended. Reason is given:
 10 because if one sees too much or perhaps improperly,
 11 there may be an issue. The transcript reference is
 12 Day 36, page 91, line 16, to page 92, line 9.

13 One would recall that even in accordance with
 14 Mr Joe Cheung's evidence, although he gave it in the
 15 course of hypothetical or imaginative situation, that if
 16 he heard conversations among workers to cut short type B
 17 threads to type A threads, his response is this: he will
 18 immediately stop them.

19 This is not the position of MTR now.

20 Second, as a matter of evidence, there are two
 21 incidents. These two incidents are not included in the
 22 opening-up report but these two incidents are certainly
 23 included in the Highways Department's website. The
 24 first was found on 7 January 2019. The second incident
 25 was found on 16 January 2019, where there are threaded

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1 rebars found not connected to the coupler and only two
 2 to three and three to four threads on the rebar
 3 respectively. Both are within the testing location.

4 For the record, these are items 5 and 9 on Highways
 5 Department's website.

6 These cannot be counting wrong. These cannot be
 7 mistaken. Two to three and three to four are far from
 8 ten, and far from 11. There is simply no excusable
 9 reasons why they could be counted wrong. These are
 10 irrefutable evidence that they are rebars being cut
 11 short. These are clearly incidents outside those that
 12 have been identified by Leighton, outside those that
 13 have been identified by MTR. This could not, in my
 14 respectful submission, be said as "isolated incidents".

15 With respect, China Tech is unpleasantly surprised,
 16 astonished and indeed shocked to hear that given all
 17 these factual and indisputable evidence one can still
 18 suggest that wholesale or systematic cutting does not
 19 exist in the construction site.

20 We may revisit the complaints of Jason Poon at this
 21 juncture. First, there were threads exposed outside of
 22 the couplers after reinforcement bars were installed.
 23 Second, threaded sections of reinforcement bars were
 24 being cut, and insofar as the extent of the malpractice
 25 is concerned, it is approximately 5 per cent of those or

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1 around 1,000-odd rebars are suspected to be cut.

2 But one thing should be borne in mind: neither
 3 Mr Jason Poon nor any China Tech staff came out to
 4 profess they saw type A threads being cut. They just
 5 say threaded end of a rebar being cut.

6 Another thing should be borne in mind: these are
 7 unchallenged and clear evidence from Intrafor and
 8 evidence from Hung Choi that cutting of threaded end
 9 should not occur on the construction site. Fang
 10 Sheung's Joe Cheung and Mr Pun Wai Shan both said
 11 cutting of threaded end is an insult to the profession.
 12 This is a matter of fact, whether threaded bars were cut
 13 or they were not cut. This is not an issue of
 14 structural integrity, not an issue of safety, not
 15 an issue of code compliance; this is a matter of fact,
 16 whether they saw it cut or they did not see it but
 17 nonetheless came out to fabricate matters, as to whether
 18 China Tech's evidence is credible or not, this is the
 19 same par to be measured against, whether they saw
 20 threads being cut or they did not see bars being cut,
 21 and that's all.

22 Comparing the allegations of China Tech and the
 23 results of the opening-up, thus it would be blatant, it
 24 would be clear, in our respectful submission, that these
 25 allegations were already proven. It does not help for

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1 MTR to now say the few millimetres are just being cut
 2 because the conversion of type B to type A is required.
 3 Here, we are just concerned with one simple fact: being
 4 cut or not being cut. That's it.

5 Apparently, that should already be the end of the
 6 matter. It was not until the week of expert evidence
 7 that there were issues as to the standard requirement of
 8 coupler connection. We wish to address head-on that the
 9 requirement of butt-to-butt was not a new and/or recent
 10 invention of BOSA or government. Rather, BOSA had
 11 always emphasised the need that the threads should be
 12 connected butt-to-butt.

13 In this regard, I wish to bring this Commission to
 14 the important document, the QSP, which is in tab 5, or
 15 if it is more convenient to turn up the main bundle,
 16 that is in bundle H9, H4265. If we may go to H4280,
 17 which is the famous page that we have been to a number
 18 of times, in the diagrammatic representation it is
 19 butt-to-butt. If we go to the box therein-under, it
 20 also mentions "butt-to-butt", in the last sentence:
 21 "This is to ensure butt-to-butt connections can
 22 always be achieved when the rebar are spliced inside the
 23 coupler."
 24 With respect, the butt-to-butt requirement was there
 25 from the very first day when SCL1112 project is there.

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| <p>1 It is not a recent invention. This was also 2 re-emphasised in Paulino Lim's evidence when he 3 mentioned that butt-to-butt requirement is present in 4 the QSP, and this is also re-emphasised by Prof Yeung in 5 his evidence, where we could all recall that he drew 6 a diagrammatic representation on the whiteboard. 7 Notably, no one ever queried -- not MTR, not 8 Leighton, not counsel for the Commission -- that the 9 butt-to-butt requirement was incorrect. 10 And nonetheless there was a twist. The twist is 11 that there was a suggestion that embedment of six 12 threads would be adequate. There was a test 13 collaboratively done between BOSA and CASTCO. 14 I wish to give a chronological backdrop of that. 15 The test was conducted on 21 November 2018. It was 16 included in our hearing bundle on 7 December 2018. 17 Mr Paulino Lim gave evidence on 17 December 2018. 18 Everyone in this room knows about the CASTCO tests. No 19 questions as to the six-thread theory was ever put to 20 Mr Paulino Lim, not by MTR, not by Leighton, not by 21 counsel for the Commission. No one saw the need to 22 raise this matter. 23 If I might be so bold to suggest: because at that 24 time only three samples were opened up, on 17 December. 25 On 19 December, nonetheless, the need then arises. Five</p> | <p>1 suggestions that came out of the blue that butt-to-butt 2 was actually not required. The CASTCO test report, as 3 I have emphasised, was sitting there all the way since 4 7 December in our hearing bundle. We know it, the 5 government knows it, certainly the Commission knows it, 6 MTR knows it, Leighton knows about it, but the 7 proposition is that butt-to-butt simply is not 8 a requirement and that 60 per cent engagement length is 9 indeed the proper goalpost. If that is the case, then 10 it would be sensible for MTR or counsel for the 11 Commission or counsel for Leighton to raise that point 12 and put it fairly and squarely to Mr Lim. 13 Of course I cannot speak for the government but 14 insofar as China Tech is concerned, that 60 per cent 15 engagement proposition is certainly out of the blue. 16 That could have been raised with Mr Lim, but it was not. 17 More mysteriously, despite months have passed, no 18 final report was issued. At the end of the day, this 19 preliminary report was never accredited by HOKLAS. 20 At this juncture, I wish to put up two documents 21 which I hope the Commission can put side by side. The 22 first document -- 23 CHAIRMAN: Sorry, help me a second. HOKLAS is ...? 24 MR SO: HOKLAS is the accreditation system for the 25 laboratory.</p> |
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| <p>1 samples were dug up. All five samples failed the 2 required 37mm standard, and outrageously the fifth 3 sample was 6.22mm. That is the chronological backdrop 4 of the whole incident. 5 As to what can be made out of that chronological 6 backdrop, I leave it in the good hands of the 7 Commission. 8 Returning back to the CASTCO laboratory tests, 9 mysteriously, no one knows who initiated the tests. 10 Counsel for the Commission initially suggested that this 11 test is jointly done by the government, MTR and BOSA. 12 Counsel for the government indicated that this was not 13 initiated by them. To be fair, one would notice that 14 there were numerous correspondences between BOSA and 15 government, and MTR and government, after the CASTCO 16 tests. 17 I pause here. Yesterday, my learned friend 18 Mr Boulding made an attempt to criticise both China Tech 19 and government, why we did not seek to cross-examine 20 Mr Paulino Lim if we considered this requirement to be 21 correct? With all due respect, this criticism was 22 misconceived. With the QSP at hand, with the diagrams 23 at hand, all of us, in my submission, were working on 24 this level playing field, that is to be ensured 25 butt-to-butt. Indeed, it was Leighton's and MTR's</p> | <p>1 CHAIRMAN: Thank you. 2 MR SO: H-O-K-L-A-S. 3 If we can go to the test reports, please. That is 4 in tab 7, or if it is the main bundle, that's 5 H25/H44521. 6 Can I have another piece of document put up at the 7 same time: H4181. If these two could be put side by 8 side. 9 One would notice both are CASTCO's tests. The right 10 one, at the right-top, we can see a stamp of HOKLAS. 11 For the left one, the HOKLAS stamp is missing. 12 If we can blow it up, for the left one, in terms of 13 the specified yield strength of the bar, "900" was 14 crossed out, not typed. No one has bothered to write 15 down the actual specified yield strength of the bar. 16 But if we zoom into the right one -- yes, can the grade 17 of the bar be blown up -- 460MPa was clearly typed 18 there. One can compare the same tests done by the same 19 laboratory: utterly different layout, without HOKLAS 20 accreditation this time, without the grade of the bar 21 being stated this time. 22 To put a long story short, one would know that the 23 six-thread theory hinges upon the credibility and 24 reliability of this CASTCO test. 25 In my submission, the types of the test conducted by</p> |

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| <p>1 CASTCO is simply inadequate. In the QSP, various tests 2 are required to be conducted in order to be 3 BD-compliant. In order to have a full picture of the 4 couplers, all these tests have to be conducted. More 5 specifically, I note that Mr Chairman has indicated the 6 7 January letter should not be placed great weight. But 7 in this respect, the 7 January letter of BOSA obviously 8 pointed out two facts which we all know from the QSP. 9 First, there is no useful purposes to conduct 10 a partial engagement thread test to the couplers. The 11 reason is simple: because it is unlikely to survive the 12 permanent elongation and cyclic tension compression test 13 required by the QSP. 14 There were some experts indicating that it would 15 simply be irrelevant or immaterial to conduct the two 16 other tests. With respect, it is not open for them to 17 do so. The QSP approved by BD, having full legal force, 18 required all these tests to be done. 19 If we take a look back at the famous diagram that we 20 have just been looking at. 21 CHAIRMAN: I'm not arguing with you here, but I don't think 22 that there was any suggestion that the QSP did not 23 require tests to be done or that a series of different 24 tests, all of them going to the robustness of the units, 25 were required for the manufacturer so that he could</p> | <p>1 carried out before the works commenced, so that 2 everybody was satisfied that all the materials could and 3 would pass those tests. All those tests were in fact 4 done, and we have all the results of those tests that 5 were done before the works actually commenced. 6 What we are now in is a rather different situation: 7 all the works having been completed, what are the 8 appropriate tests to be carried out now, in the light of 9 safety and serviceability requirements? 10 So it's a rather different question, if I may say 11 so. 12 (Commissioners conferring) 13 MR SO: Mr Chairman, I entirely understand. 14 CHAIRMAN: Do you see the point? 15 MR SO: I see the point. But the thing is, because in this 16 current situation, we are now talking about partial 17 engagement. When it comes to -- 18 CHAIRMAN: Yes, that's right. So therefore our 19 understanding is that the experts were not in any way 20 deprecating the fact that overall suitability testing 21 was required before these things could be marketed. 22 What they are saying is, looking now at the way in which 23 they have been used with only partial threading, how do 24 we test issues of safety? 25 MR SO: My submission is this -- because when BOSA actually</p> |
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| <p>1 market his goods. 2 What I understand is that having regard to the 3 particular purpose for which these couplers were used, 4 it was not necessary to pass all the tests for 5 serviceability. 6 MR SO: I understand, Mr Chairman, but that is exactly my 7 submission. My submission is that it is not open for 8 the expert to now say the QSP is incorrect, and now that 9 because we in this situation just need one test in order 10 to survive, the coupler needs to survive all these tests 11 in order to be suitable to be used in this Hung Hom 12 Station station box, in order to carry the weight, in 13 order to operate in its full capacity. 14 So that's my submission. 15 CHAIRMAN: Sorry, again, I don't wish to hold you up -- my 16 understanding, and I'm open to correction here because 17 I may well have got it wrong, is that BOSA, before they 18 can sell their units, have to pass a series of tests. 19 MR SO: Yes. 20 CHAIRMAN: So, therefore, the fact that they have sold those 21 couplers means they will have passed those tests. 22 MR PENNICOTT: Sir, that's right. Sorry to interrupt Mr So, 23 but the position is, under the QSP, that all three 24 tests, if I can call them that -- tension, cyclic load 25 and elongation tests -- were required by the QSP to be</p> | <p>1 sell these products, in order to be fit for purpose in 2 Hung Hom Station, these tests are required, and 3 of course these tests are being conducted with full 4 engagement. 5 But in this situation, if we are now suggesting that 6 partial engagement can do as good as it is full 7 engagement, it is therefore my respectful submission 8 that all these three tests also have to be conducted, in 9 order to be properly -- in order to give the effect that 10 it's as good as full engagement. 11 CHAIRMAN: I appreciate that. Thank you. That clarifies 12 the matter. 13 My understanding -- and it's a matter for 14 Prof Hansford and I -- is that the experts, or one or 15 more of them, were saying that in fact, having regard to 16 the particular circumstances in which these particular 17 couplers now find themselves, you don't need to do all 18 of these tests. 19 In order so that everybody understands, I'm overly 20 fond of military analogies, and counsel who've had to 21 bear me over many decades will be aware of that, but 22 it's rather like trying to get into an elite commando 23 unit. You have to be able to climb, you have to be able 24 to jump, you have to be able to run, and you have to be 25 able to do all of it with 200 pounds on your back.</p> |

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1 Now, if in fact it's decided that the only issue
 2 that needs to be determined is running across a flat
 3 desert with 200 pounds on your back, they don't need to
 4 test the jumping and they don't need to test the
 5 climbing; they just need to test the ability to run.
 6 So there is the suitability test because you don't
 7 get into the unit without being able to do all of that,
 8 but in fact on this occasion what they are looking to is
 9 an ability to run across a flat desert in hot
 10 conditions.
 11 MR SO: I beg to differ, Mr Chairman. May I just borrow the
 12 example you have just used. Of course if one wants to
 13 enter into the military, you have to run, you have to
 14 climb and all those things. But now we have a
 15 suggestion: a handicapped person wants to enter into the
 16 military, then the handicapped person should be subject
 17 to the same tests -- he has to be able to climb, he has to
 18 be able to run. We can't say that he is able to climb
 19 and that's fine, we are happy with that. We now have
 20 a different situation. We have a handicapped person who
 21 wishes to join.
 22 CHAIRMAN: I see the point you are making. You are saying,
 23 okay, whatever the situation is, the coupler is not
 24 being used as it should have been used, with full
 25 threading, and therefore you have to look at all the

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1 tests --
 2 MR SO: Indeed.
 3 CHAIRMAN: -- in the light of partial threading.
 4 MR SO: Exactly. That's my point.
 5 CHAIRMAN: I appreciate the point you are making.
 6 MR SO: The reason for that being so is because now partial
 7 engagement is being advocated as being as good as
 8 a full-threaded engagement thread.
 9 Using the example that Mr Chairman has just used,
 10 once being enrolled into the military, no one would say
 11 that because you are handicapped you are asked to do
 12 less duties. We subject him to the same duties, the
 13 same difficulties that one would encounter in work, and
 14 therefore they should be subject to the same test.
 15 That's my submission.
 16 CHAIRMAN: Good. Thank you. I understand that now.
 17 MR SO: Thank you.
 18 Now, moving back to the QSP -- in the QSP, there are
 19 clearly two criteria that have to be satisfied. If
 20 I may just trouble the Commission to go to H4280. One
 21 will remember that in the QSP, there are actually
 22 twofold, two requirements, so that a coupler connection
 23 could be considered as satisfactory, the first being
 24 that it must be fully engaged and the second one being
 25 that there should be no more than two threads being

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1 exposed.
 2 There were different postulations by Dr Mike Glover,
 3 Mr Nick Southward and Prof Don McQuillan. There were
 4 postulations that six threads being engaged would be all
 5 right, there were postulations that 36mm engagement
 6 would be all right. They all satisfied the same
 7 criteria, no more than two threads being exposed, but
 8 they all neglected the first part. The first part
 9 requirement is it should be fully engaged.
 10 The clear answer is that if one takes the six-thread
 11 theory or the engagement length of 36mm, then that
 12 coupler connection would not be fully engaged.
 13 Mr Boulding yesterday humorously suggested that would it
 14 be required that workers bring in an X-ray to conduct
 15 installation works and to ensure that they are
 16 butt-to-butt? The trite answer is no, because one would
 17 know that a partially engaged thread would be loose, and
 18 I invite this Commission to actually take a look at the
 19 exhibit. I actually did it myself yesterday. When it
 20 is partially engaged, it actually can be moved; it is
 21 loose.
 22 I am prepared to quote a few evidence here that is
 23 not in my written submissions. The first one is the
 24 evidence of Mr Andy Wong, in Day 30, page 131, line 16,
 25 if that could be turned up. This was examination by

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1 Mr Pennicott. Day 30, page 131, line 16, Andy Wong:
 2 "For couplers, first of all, I wasn't assigned to be
 3 T3 of QSP, but I myself -- well, previously, on another
 4 site, I was a T3. So I would pay attention to couplers.
 5 During my surveillance, I would pay attention to
 6 whether they were properly screwed on, and I would
 7 physically touch them, push them, to see if they were
 8 aligned or stable. I would do it very closely, very
 9 close to the rebar, or I would conduct a visual
 10 inspection on steel fixing work."
 11 On the same day, page 142, line 10. This is the
 12 re-examination of Mr Boulding. Question:
 13 "Can you tell the Commissioners how you would check
 14 for compliance?
 15 Answer: First of all, as I said, I would do
 16 a visual inspection, that is to see if there would be
 17 an over-exposure of threads."
 18 That's the second criteria.
 19 "The correct ones would be just one or two threads."
 20 Then this is the third criteria:
 21 "Then I would use my hand or use my leg to push it,
 22 to see if they were steady. If there was too little
 23 connection, then it would not be stable or not aligned."
 24 We can't say now, all of a sudden, that a six-thread
 25 engagement, or 24 or 26 or whatever number of engagement

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1 is, all right because it satisfies the second criteria,
 2 because there is still the first criteria: if it is not
 3 tightly screwed, then it's not butt-to-butt -- these are
 4 all synonyms -- then it would be loose.
 5 We could also take a look at the latest BOSA
 6 correspondence with the government which is in
 7 bundle H27, page 46148. This transpired after we had
 8 finished hearing evidence.
 9 CHAIRMAN: I'm not going to stop you referring to this, but
 10 I do think I need to make clear: the reason why I did
 11 not say no weight could be given to this correspondence
 12 after evidence had been completed is, but that one has
 13 to be careful as to what weight one gives is because
 14 Mr Paulino Lim had already given his evidence, he had
 15 already been examined by everybody, he had already had
 16 an opportunity to explain. He would therefore have
 17 understood the matters in issue and effectively this is
 18 like continuing his evidence outside of the Commission,
 19 if you see what I mean.
 20 MR SO: I understand.
 21 CHAIRMAN: And one has to be very careful of that, because
 22 it's probably defensive in nature -- I'm not saying it
 23 is, but it's probably defensive in nature -- and no one
 24 has an opportunity to question him on it.
 25 MR SO: I entirely understand.

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1 CHAIRMAN: So I wish to lay that down. I don't want anyone
 2 to think I have ruled it inadmissible. This is
 3 a commission of inquiry. What I have said is we will
 4 only take into account evidence before the Commission,
 5 and that doesn't mean evidence that somehow finds its
 6 way into discussion; it means evidence that has come
 7 formally before the Commission so that that evidence may
 8 be tested if necessary.
 9 MR SO: I just wish to add one more point. The
 10 correspondences by BOSA, if I may be so bold as to
 11 suggest this, they are actually reiterating the same
 12 evidence given by Mr Paulino Lim. Of course this is
 13 just my submission.
 14 CHAIRMAN: I'm happy to let you look at it, but it's all
 15 subject to those concerns that I have just expressed.
 16 MR SO: Thank you, Chairman.
 17 Just on this letter, this letter is dated 15 January
 18 2019. If I may trouble the Commission to go to the
 19 third paragraph. The government actually asked BOSA
 20 what is meant by "loose" when it is not butt-to-butt
 21 and/or tightly connected and/or fully engaged:
 22 "Regarding meaning of 'loose' -- 'loose' takes the
 23 ordinary dictionary meaning and is opposite to 'tight'.
 24 We have prepared a sample of Y40 coupler assembly for
 25 your collection (or we could can deliver it to you) so

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1 that you can see to believe first-hand if bars are
 2 spliced butt-to-butt, the assembly is tight, otherwise,
 3 the assembly is loose. In other words, if you slightly
 4 shake the bar assembly back and forth, the former [which
 5 is tight] assembly will move in one piece as one
 6 integrated assembly, whilst in the latter case [which is
 7 loose], the coupler will move separately from the bar.
 8 As regards performance and strength of such loose
 9 assemblies, we have already given our comments in our
 10 previous response and we have nothing further to add."
 11 CHAIRMAN: Right.
 12 MR SO: That is exactly what can be seen from the exhibit
 13 and I invite the Commission to take a look at the
 14 exhibit, if you have the time, and see whether
 15 a partially engaged coupler and thread would actually
 16 take this effect.
 17 There was also criticism as to whether this is
 18 canvassed in BOSA's training. For the Commission's
 19 record, this has actually been explored in the evidence:
 20 in the evidence of Edward Mok, Day 21, pages 17 to 19;
 21 for Man Sze Ho, the knowledge was from Edward Mok, the
 22 reference is Day 22, lines 11 to 12; for Kobe Wong,
 23 Day 30, page 20, lines 11 to 23; and for Andy Wong,
 24 I have just gone through the two important bits, Day 30,
 25 pages 131 to 132 and pages 142 to 143.

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1 Thus, in my respectful submission, the postulation
 2 that less threads to be engaged simply flagrantly
 3 ignores the requirement of what is meant by "fully
 4 engaged" and is now just cherry-picking one of the two
 5 criteria and saying that because there are two threads
 6 exposed it could be passed, by saying it's
 7 38 millimetres or 24 or 26 millimetres, or six threads.
 8 More importantly, the QSP is specifically designed
 9 for the particular Hung Hom Station Extension project.
 10 The two tests are certainly not there for cosmetic
 11 purposes in order to make the QSP good-looking. They
 12 are there to serve a particular purpose, and that
 13 particular purpose must be a safety purpose.
 14 Thus it would be, in my respectful submission,
 15 ignorant and indeed irresponsible to simply omit
 16 a particular test and arbitrarily to conclude that the
 17 six-thread theory is tenable just based on one test.
 18 The second buck of course is that the sample size of
 19 the test is clearly inadequate. We can see the CASTCO
 20 test has just tested one sample for each percentage
 21 engagement. Common sense dictates that in order to
 22 obtain reliable results, a number of samples should be
 23 tested. It would be unwise, both by common sense and
 24 scientifically, to suggest one sample performing
 25 exceptionally good or exceptionally bad could justify

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| <p style="text-align: right;">Page 37</p> <p>1 a change of a yardstick. Thirdly, to arithmetically 2 deduce the percentage engagement length itself also 3 violates scientific theories and logic. 4 Expert opinion from Prof Au told us that the 5 distribution of stress of threaded rods inside the 6 couplers are not uniformly distributed. To assume that 7 it is, in Prof Au's words, would simply overstate the 8 matter. 9 Lastly but fatally, I have already pointed out 10 no one ever explained what grade of rebars were used to 11 obtain the results. Mysteriously, the grade of the 12 rebars in the test worksheets were crossed out and 13 countersigned by a lab technician. That said, no 14 clarifications, no manuscripts, no typed words, actually 15 stated the actual grade of the rebars. 16 Prof Au says, to the very least, the CASTCO result 17 was very strange and it is reasonable for people to cast 18 doubt upon it. The mystery has to breed even further 19 suspicion against the background that it would take 20 quite some time to find a grade 460 bar now because 21 460 bars are no longer in the marketplace. 22 I recall that Mr Pennicott, on Day 41, told us in 23 regard to this test: that's all we've got so far and 24 that is what we have to work with. To this utterance, 25 China Tech entirely disagrees with that, but with this</p> | <p style="text-align: right;">Page 39</p> <p>1 that would require clarifications from BOSA. 2 This is in bundle D2, page D986. 3 MR PENNICOTT: Let's look at it. Let's look at what you 4 said. 5 MR SO: Bundle D2, page D986. If that could be pulled down 6 a bit. Actually, China Tech has suggested four parties, 7 the first being at the top, we can see Wing & Kwong, and 8 at the bottom: 9 "Wing & Kong was Leighton's sub-contractor 10 responsible for carrying out steel reinforcement bar 11 cutting, bending and fixing works for the EWL/NSL slabs 12 at the NAT. We believe that if the Commission could 13 identify Wing & Kong as one of the involved parties and 14 requesting Wing & Kong to participate into the Inquiry, 15 it could provide great assistance to the Commission for 16 the Inquiry into the matters set out in the terms of 17 reference. 18 Further, our client suggests the following entities 19 could also provide assistance to the Commission namely: 20 1. Hills Construction Ltd ... 21 2. BOSA Technology (Hong Kong) Ltd ... 22 3. Atkins China ..." 23 And we note that Atkins is now included as one of 24 the involved parties. 25 This letter is dated 2 October 2018. This is very</p> |
| <p style="text-align: right;">Page 38</p> <p>1 preliminary result, with a highly limited sample, highly 2 limited type of test being conducted, allow me to ask 3 rhetorically: how can we safely say on the basis that 4 the six-thread engagement theory could stand? In my 5 respectful submission -- 6 CHAIRMAN: I appreciate the point you are making now, yes. 7 We are not in a position, obviously, to look ahead, but 8 my understanding is that we will be assisted, hopefully, 9 if there are future tests. 10 MR SO: Yes, of course, subject to those tests. 11 CHAIRMAN: Absolutely, yes. That's the only point I wish to 12 make. 13 MR SO: Thank you, Chairman. 14 There has also been criticisms by my learned friend 15 Mr Boulding yesterday indicating that China Tech and 16 government were now attempting to attack the credibility 17 of BOSA. Both Mr Pennicott and Mr Boulding have also 18 made observations in the course of the hearing to you, 19 Mr Chairman and Mr Commissioner, that BOSA was actually 20 not made an involved party. 21 Pausing here, I wish to emphasise yet again: 22 China Tech urged this Commission to add BOSA as 23 an involved party. Since the very, very beginning in 24 the hearing China Tech did realise that there may be 25 issues both as to expert, both as to factual evidence,</p> | <p style="text-align: right;">Page 40</p> <p>1 well, well, well before the commencement of the 2 substantive hearing. It is unfortunate that this 3 Commission has not considered BOSA to be appropriate to 4 send a Salmon letter, but that, as Mr Pennicott said, is 5 all we can work with at the time being. 6 There was an even further twist when everyone was 7 discussing how much threads would be installed into the 8 couplers or whether there was any rebar cutting. It was 9 suggested purely from an engineering perspective that 10 the bottom mat of the rebar of the EWL slab and 11 diaphragm wall surface would simply never be in tension, 12 but for the necessity of code compliance there was 13 simply no need to be rebars inside the slab. Even to be 14 code compliant, up to 50 per cent of the coupler 15 assembly could be defective. 16 Thus it is the evidence of Prof McQuillan that it 17 would be unnecessary, pointless and a waste of time and 18 resources to conduct the opening-up. 19 This conclusion, which is not accepted, begs 20 a series of questions. First, why did MTR propose those 21 designs in the first place? Why did Atkins, being MTR's 22 design consultant, consider it to be appropriate? Why 23 was Fang Sheung required to handle the rebar fixing 24 works? And more fundamentally, why were public funds 25 required to pay for these designs and works in the first</p> |

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| <p>1 place?</p> <p>2 Leaving all these aside, these questions were simply</p> <p>3 not easy ones to answer. The answers would be simply</p> <p>4 MTR and Atkins themselves, when designing the project,</p> <p>5 considered these rebar works to be essential and</p> <p>6 necessary. Mr Shieh yesterday challenged by saying that</p> <p>7 this was not put to Prof McQuillan. This actually was.</p> <p>8 It is in Day 44, page 185, line 2, to Day 44, page 186,</p> <p>9 line 8.</p> <p>10 Mr Chairman and Mr Commissioner, we place much</p> <p>11 emphasise, in light of the opening-up results, because</p> <p>12 one would note from the submissions of various parties,</p> <p>13 we need corroborating yet independent, undisputed and</p> <p>14 indisputable evidence to prove the credibility of</p> <p>15 China Tech and/or Jason Poon's evidence.</p> <p>16 In light of all these undisputed, indisputable</p> <p>17 corroborating evidence, the only irresistible inference</p> <p>18 would be someone cut the bar, and -- to say at the very,</p> <p>19 very least -- these are not isolated incidents. BOSA's</p> <p>20 standard is all along that rebars are to be 44mm long</p> <p>21 with a positive one pitch tolerance, being 44mm to 48mm.</p> <p>22 In appendix A, we clearly see that there are about</p> <p>23 a quarter of the rebars short of that 44mm to 48mm</p> <p>24 requirement. Merely on this factual evidence,</p> <p>25 China Tech has clearly and sufficiently proven its case.</p> | <p>1 Prof Hansford in the course of the hearing, that to cut</p> <p>2 down a few millimetres would be quite impossible.</p> <p>3 Just to clarify, the few millimetres' difference is</p> <p>4 calculated after giving all the benefit of the doubt to</p> <p>5 the coupler connections. If we take a worst-case</p> <p>6 scenario and deducting, not by adding up 3mm but</p> <p>7 deducting 3mm, then the whole scenario will make</p> <p>8 abundantly more sense because the cutting will be up to</p> <p>9 10 millimetres or even more. Then that would be</p> <p>10 approximately a quarter of the thread, and that would</p> <p>11 entirely make sense.</p> <p>12 There has been bold suggestion, I submit, from</p> <p>13 Mr Southward, the expert of Leighton, that those rebars</p> <p>14 were not cut or grinded but were simply shortened when</p> <p>15 they were delivered on site. With respect, this</p> <p>16 response flagrantly ignored the in-built supervisory</p> <p>17 system in place in checking threaded rebars delivered</p> <p>18 on site. Ironically, this is actually included in</p> <p>19 Leighton's closing submission, in paragraph 133(7).</p> <p>20 Leighton actually confirmed that there were actually</p> <p>21 proper checking of the threaded length of the rebars and</p> <p>22 they actually kept a logbook with them.</p> <p>23 So how can we just say those rebars were delivered</p> <p>24 there shorter than the required length?</p> <p>25 There were also suggestions that further opening-up</p> |
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| <p>1 I also emphasise the two shortened rebars, clearly</p> <p>2 shortened rebars, that were found in the course of the</p> <p>3 opening-up. Any reasonable person and/or competent</p> <p>4 expert would have come to the conclusion that, at the</p> <p>5 very least -- at the very least -- there is</p> <p>6 a possibility that the rebars mentioned have been</p> <p>7 shortened, either by way of cutting it or grinding it.</p> <p>8 More importantly, one should not read just the evidence</p> <p>9 in a detached fashion, as I have mentioned numerous</p> <p>10 times. The opening-up results should be read</p> <p>11 collectively with the photographs now available, with</p> <p>12 the evidence of Fang Sheung workers, Leighton engineers,</p> <p>13 MTR staff, and the proven NCR157.</p> <p>14 MTR suggests --</p> <p>15 CHAIRMAN: I think you can accept that certainly</p> <p>16 Prof Hansford and I will not look at individual</p> <p>17 evidence. We will look at individual evidence and then</p> <p>18 look at all of those individual items of evidence in the</p> <p>19 collective sense. So we will follow the normal</p> <p>20 procedures in that regard.</p> <p>21 MR SO: Thank you.</p> <p>22 MTR suggests that it will not be possible to cut</p> <p>23 a few millimetres. That was already mentioned in</p> <p>24 paragraphs 84 and 85 in their closing submissions.</p> <p>25 There were also concerns, both from MTR and from</p> | <p>1 would simply not be required. Like the government,</p> <p>2 China Tech's position is that it would be premature to</p> <p>3 now say the opening-up should terminate. Rather,</p> <p>4 without knowing where the problematic connections were</p> <p>5 and where they are concentrated, rectifications could</p> <p>6 not be properly taken and naturally public confidence,</p> <p>7 which is of utmost importance to a public</p> <p>8 infrastructure, could never be restored.</p> <p>9 China Tech observes that, approaching the end of the</p> <p>10 substantive hearing, there have been painstaking efforts</p> <p>11 by MTR, Leighton and the Commission to put emphasis that</p> <p>12 safety is a matter, or even the only matter, that</p> <p>13 concerns the Commission. Further, structural safety is</p> <p>14 a matter, code compliance is another matter, product</p> <p>15 specification is yet another matter, civil liability is</p> <p>16 also another matter.</p> <p>17 With respect, to artificially divorce structural</p> <p>18 safety and product specification is unwise, because at</p> <p>19 the end of the day product specification of BOSA was</p> <p>20 there to serve structural safety. More importantly,</p> <p>21 without knowing the extent of non-compliances, the</p> <p>22 Commission simply could not make any sensible</p> <p>23 recommendation to the CE-in-Council to avoid similar</p> <p>24 incidents.</p> <p>25 With this factual background which are clearly,</p> |

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| <p>1 I stress, independent, objective, indisputable yet 2 corroborating, I then discuss the second topic of my 3 closing submission, the evidence given by China Tech. 4 This area of evidence is under vigorous disputes 5 among parties. 6 It has been raised on no less than one occasion and 7 by no less than one party that evidence of China Tech 8 should be viewed under a microscope. We accept that 9 China Tech's evidence is important. We accept that 10 China Tech's evidence has to be reviewed in a cautious 11 manner. Yet to literally adopt a microscopic view or 12 what we commonly call a minute dissection of the 13 evidence might potentially mislead this Commission into 14 walking down an incorrect path. 15 Amongst other things, this hearing is realtime 16 transcribed and putting too much emphasis and reliance 17 on the transcript might yield undesirable or even wrong 18 conclusion. The Commission certainly has the benefit of 19 seeing and hearing a witness give evidence. You have 20 power to make conclusion as to reliability. Some 21 evidence may read well in print but it may be 22 unconvincing. But sometimes it may not read well in 23 print but the tribunal can attach importance to it. 24 We are fortunate in this Commission to have you, 25 Mr Chairman, who has extensive judicial experience, and</p> | <p>1 dissection of the transcript has yielded a failure to 2 answer a question; there are some inherent 3 improbabilities of the evidence; a piece of evidence is 4 not included in a statement. These of course can make 5 pages of submissions, but in real life, even with 6 truthful witnesses, these discrepancies, improbabilities 7 and omissions will occur. Indeed, if they do not, then 8 there will be another line of attack by saying everyone 9 colludes together and teaches another person to give 10 evidence. 11 A realistic attitude must be encouraged so that 12 attacks would only be made to material and significant 13 discrepancies, improbabilities or omissions, such as 14 would lead to or should lead a tribunal to doubt 15 credibility on central facts. 16 To conclude, there would be a great danger of losing 17 sight of the wood for the trees. In my submission, the 18 theme of China Tech's evidence is far more important 19 than the fine details of that evidence. Giving 20 evidence, be it viva voce evidence or witness statement, 21 is not a memory test, and in particular more sympathy 22 should be lent to China Tech's witnesses in light of the 23 lapse of time. 24 I turn first to the probably most disputed person in 25 China Tech's evidence, Mr Jason Poon. Jason Poon has</p> |
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| <p>1 Mr Commissioner, who is highly respected in the 2 profession, to hear evidence. The Commission would 3 therefore gradually become instinctive in forming 4 an impression of the personality of a witness. Thus 5 a witness should not necessarily be untrustworthy 6 because there were inaccuracies or inconsistencies in 7 minor details and particulars, and a witness should not 8 be distrusted because he is tired or antagonised or 9 confused or impatient, and with all these experiences 10 such impression could well go against the transcript and 11 even go against those inconsistencies. 12 It would be impossible to expect a witness to give 13 watertight evidence. We are all human. We are limited 14 by observations, recollections, expressions. Coupled by 15 the fact that witnesses are not familiar with court 16 setting, evidence must be imperfect. This is judicial 17 experience and it is also common sense. 18 The real issue that rests with the Commission is the 19 degree and importance of the aforesaid discrepancies and 20 what were the explanations tendered by the witnesses. 21 The Commission may elect to place weight on a witness, 22 a particular part of the evidence, and not the other 23 part. 24 Of course the written submissions by various parties 25 rests on the discrepancies, after a microscopic</p> | <p>1 largely been subjected to evidentiary vilifications. 2 First, China Tech was portrayed to be a company without 3 financial resources, without adequate cash flow and 4 unable to pay employees' wages. He was even portrayed 5 as a person that is aggressive and manipulative in 6 character and has engaged in criminal, violent acts. 7 Yet when that evidence was properly tested, they were 8 proven to be completely false and devoid of substance. 9 The first line of criticism was because Jason Poon 10 took a photograph on 22 September, he was not on the 11 sign-in/sign-out record, therefore he was telling lies. 12 Jason Poon insists that that record was not correct. At 13 that juncture, counsel for the Commission indicated to 14 Mr Poon: 15 "... until somebody tells me otherwise, I'm prepared 16 to, as it were, accept the reliability and accuracy of 17 those records." 18 Because Mr Poon was proved not to be on the record, 19 thus there were no reasons to believe what Mr Poon says. 20 Yet, apparently, Leighton's sign-in/sign-out record was 21 defeated in each and every purpose in the evidence of 22 Fang Sheung. Mr Pun Wai Shan of Fang Sheung explained 23 that he entered just as a visitor and therefore he would 24 not be on the sign-in/sign-out record, and apparently at 25 that time counsel for the Commission said that as long</p> |

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| <p>1 as there is an explanation, the Commission would not be 2 too concerned about it.</p> <p>3 Equally, in the course of cross-examination, 4 Mr Joe Cheung confirms that driving into the 5 construction site would not be required to sign in/sign 6 out.</p> <p>7 From all this evidence, in my submission, Leighton's 8 sign-in/sign-out record simply does not work. The 9 sign-in/sign-out record was further discredited by 10 Ms Emily Cho of Leighton and Mr Alex Ngai of China Tech. 11 Out of the three gates available to enter the 12 construction site, only two --</p> <p>13 CHAIRMAN: I think you can accept that we haven't -- 14 certainly I haven't proceeded on the basis that there's 15 an iron-clad, completely trustworthy system of check-in 16 and check-out. In fact, a lot of the evidence you have 17 referred to demonstrates that fact.</p> <p>18 MR SO: Thank you.</p> <p>19 COMMISSIONER HANSFORD: I concur with that.</p> <p>20 MR SO: Thank you. In that case, I will move to the second 21 topic regarding Jason Poon.</p> <p>22 There were three investigations being taken. These 23 three investigations unfortunately, I say, shed light to 24 the in-built bias or perhaps grudges towards Jason Poon. 25 That's Lumb's report, Wu's report and the June report by</p> | <p>1 commercial gain from raising the issues, or indeed, as 2 said by Mr Shieh yesterday, the troublemaker.</p> <p>3 Of course this apparently also troubled the learned 4 Chairman. With respect, both the Lumb and Wu report 5 were superficial, do nothing more than window-dressing. 6 The reports did include lots of details of the 7 supervisory system but no in-depth discussion as to 8 NCR157 was made, no discussion as to the complaints of 9 Jason Poon was made. They were nothing better than 10 Christmas baubles.</p> <p>11 That in-built untrustworthiness did not stop there. 12 In June 2018, the MTR was required to provide a report 13 to the Highways Department.</p> <p>14 CHAIRMAN: Sorry, did I say Christmas baubles? 15 MR SO: I said Christmas baubles, apparently because I was 16 preparing the submissions at Christmas.</p> <p>17 CHAIRMAN: I see. Thank you very much.</p> <p>18 MR SO: That in-built untrustworthiness towards Jason Poon 19 did not stop there, and in June 2018 MTR is required to 20 provide a report to Highways Department. Rather, Jason 21 Poon's evidence was only summarised in the form of 22 a schedule and appended the same to the Highways 23 Department. The explanation as given by Dr Philco Wong 24 in this letter was that, "Because China Tech made 25 evidence that contradicts assurances given to us by</p> |
| Page 50 | Page 52 |
| <p>1 MTR. Unfortunately, Lumb's report and Wu's report 2 were complete failures. The person leading the 3 investigation was never given the email that Jason Poon 4 actually sent.</p> <p>5 Secondly, knowing the nature is rebar cutting, 6 Fang Sheung being the one and only one sub-contractor 7 was never, ever interviewed.</p> <p>8 Mr Khyle Rodgers, being a frontline superintendent 9 on site, was not interviewed. Not only so, no on site 10 superintendent, general superintendent or any potential 11 eye-witnesses were interviewed. The reason given was 12 this: to make sure the investigation was independent. 13 They came to know about NCR157. NCR157 is about cutting 14 the rebar. This accusation is actually the same with 15 the complaints made by Jason Poon.</p> <p>16 After realising that Mr Ian Rawsthorne was the 17 person signing it, no attempt was made to interview 18 Mr Rawsthorne to ascertain the situation. But despite 19 knowing that the fact was giving rise by Jason Poon, 20 Jason Poon was mysteriously never interviewed. The 21 reason given again was it was an internal interview.</p> <p>22 Sixthly, yet most importantly, the Lumb report was 23 never shown to Jason Poon, the same as the Wu report. 24 Again, from Leighton's perspective, all these 25 allegations were only made by Jason Poon to get</p> | <p>1 Leighton and raised potentially serious allegations 2 against Leighton and members of its staff, therefore 3 China Tech's evidence was not included."</p> <p>4 Yet one then asks the question: correct, Dr Wong is 5 indeed correct, Jason Poon's evidence contradicts 6 Leighton's. But why then was Leighton's evidence 7 incorporated? Why was China Tech's evidence cleverly 8 chosen not to be included?</p> <p>9 Again, like Jason Poon, Fang Sheung's evidence, 10 which says "cutting of the threaded rebars were directed 11 by staff of Leighton", was included there. Why did MTR 12 have no difficulty then to include that evidence in 13 MTR's public report? Is it that these allegations are 14 not serious?</p> <p>15 Thirdly, even if MTR's internal staff recalled 16 incidents of cutting rebars which was exactly and 17 coincidentally the subject matter that Jason Poon was 18 complaining in the MTR interview, again the evidence of 19 MTR internal staff was included but not Jason Poon's.</p> <p>20 In his letter to the Highways Department, Dr Wong 21 explained the purported reason for not including that in 22 the final report. In his oral evidence he said: because 23 the Commission was set up. With respect, all these 24 descriptions are applicable to Fang Sheung, yet MTR 25 feels Fang Sheung's evidence could be included in</p> |

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1 a public report but not Jason Poon's.
 2 Dr Wong, with respect, is an evasive witness and
 3 simply overused "my legal team told me this" and "my
 4 legal team told me that" as the excuse. Most
 5 unbelievably, each and every interview we got is
 6 dialogue with the MTR staff recorded, save and except
 7 Jason Poon's.
 8 One common thread can be drawn from all these three
 9 reports: Jason Poon's allegations are in essence where
 10 these investigations stem from, yet another common
 11 thread that can be drawn is that the length of Jason
 12 Poon's evidence is always shorter than two pages of A4
 13 paper. Yet Leighton and MTR feel comfortable to happily
 14 accept what Jason Poon raised was simply false and just
 15 a tactic to put commercial pressure. Despite we know
 16 that MTR, being a learning organisation, has
 17 a whistleblowing policy and clearly mandates that no one
 18 could unjustly prejudice a whistleblower. Mr Rooney
 19 from MTR says in his evidence, "in fairly firmly
 20 worded", asked Mr Zervaas to close out the contract.
 21 The in-built bias to Jason Poon is important, in my
 22 submission, because it is important in construing where
 23 the truth lies for the confidentiality agreement.
 24 The Commission, like any typical criminal trial, is
 25 faced with two drastically different factual synopses

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1 provided by China Tech and Leighton. China Tech says
 2 the confidentiality agreement was entered into because
 3 Jason Poon possessed some photographs and videos of
 4 cutting of threaded rebars, while Leighton says because
 5 it is a standard document, it is to stop Jason Poon
 6 making false allegations and lies, and the
 7 confidentiality agreement is to get it.
 8 As a matter of general practice, Leighton says, it
 9 is also common for them to enter into this type of
 10 agreement with suppliers and sub-contractors.
 11 The Commission will recall that there was actually
 12 a confidentiality clause in the sub-contract of
 13 China Tech and Leighton. This begs the question: then
 14 why would Leighton require China Tech to additionally
 15 sign another confidentiality agreement? The answer is
 16 that the confidentiality agreement signed in September
 17 2017, that is the additional bits that China Tech is
 18 required to undertake, is important. The additional
 19 bits that China Tech is to undertake is to promptly
 20 deliver up to Leighton or destroy confidential
 21 materials.
 22 Judging these two factual synopses, one can observe
 23 this. Chairman and Commissioner, we invite the
 24 Commission to consider the circumstantial evidence
 25 objectively and macroscopically. It just so happens

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1 that Leighton did not enter into separate
 2 confidentiality agreements with Intrafor, with
 3 Fang Sheung or any other sub-contractor. It just so
 4 happens that China Tech was the only lucky person to be
 5 picked. It just so happens that throughout the many
 6 years of working relationship with Fang Sheung, Leighton
 7 never entered any confidential agreements with
 8 Fang Sheung. And it just so happens that when comparing
 9 the two confidentiality clauses, the only bit additional
 10 is to destroy confidential information. And it just so
 11 happens that despite this additional obligation,
 12 Leighton says that they never required Jason Poon to
 13 delete anything. But it just so happens that Leighton's
 14 legal team then gave a conditional waiver to Jason Poon
 15 when attending an interview in MTR. And it just so
 16 happens that that interview is relating to cutting of
 17 the threaded rebars.
 18 With respect, Mr Shieh has pointed out exactly the
 19 reason why the confidentiality agreement was to be made:
 20 because Mr Poon was a troublemaker. The confidentiality
 21 agreement is simple: to shut him up.
 22 Apparently, we submit, the only irresistible
 23 inference is that Jason Poon was indeed telling the
 24 truth. Some photos and videos were indeed deleted, at
 25 the demand and at the request of Leighton.

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1 Before I leave this matter and leave Jason Poon
 2 aside, I wish to just add one observation. Jason Poon
 3 has certainly been, if I phrase it in a pleasant way,
 4 the focus, or in an unpleasant way, the target, in this
 5 Commission of Inquiry. Now, I'm a counsel. I, unlike
 6 Mr But, am not employed by Jason Poon and my overarching
 7 duty is to this Commission, is to you, sir. I am also
 8 an officer of the court. I don't mind Jason Poon
 9 sitting here and I don't mind Jason Poon hearing what
 10 I'm going to say.
 11 Jason Poon may well have been criticised to have
 12 a bad temper. He may well be criticised as outspoken.
 13 He may well be criticised as eager to speak to the
 14 media. He may even well be said to have a robust or
 15 even rude character. But leaving all this aside,
 16 however unpleasant his personality or character may well
 17 be, it is quite, quite another thing to say that he is
 18 a liar, he is dishonest, he is now fabricating matters
 19 up with ill motive; that's another matter.
 20 That is particularly so in light of the present
 21 opening-up incidents and in light of the objective,
 22 undisputed and indisputable evidence gathered so far.
 23 There has been repeated emphasis by both MTR and
 24 Leighton that they have accepted some of these
 25 endeavours: they accepted the few cutting incidents

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| <p style="text-align: right;">Page 57</p> <p>1 recalled by Edward Mok, they accepted the incidents by 2 Kobe Wong, they accepted NCR157. I just invite everyone 3 to pause here. Prior to Jason Poon making these 4 allegations, are these incidents unearthed? NCR157 was 5 not known anyone. No one knows that five threaded 6 rebars were cut. No one knows that cut-off threaded 7 heads were actually picked up. Mr Shieh indicated 8 yesterday that he may well become a fortune-teller, in 9 his spirited closing submissions, but Jason Poon is 10 certainly no prophet. China Tech is no prophet. All 11 these incidents turned out because, and just because, 12 Jason Poon made these complaints.</p> <p>13 The first is NCR157. After more effort, after this 14 Commission of Inquiry was established, Kobe Wong's 15 incidents, Edward Mok's incidents, were unearthed. Then 16 even after more effort, there was opening-up, and the 17 two cut-short bar incidents I mentioned in opening-up 18 were further unearthed.</p> <p>19 I know this submission is differing from that of 20 Leighton, differing from that of MTR and even differing 21 from that of counsel for the Commission, but in my most 22 respectful submission, Jason Poon is credible.</p> <p>23 Besides Jason Poon, different staff members of 24 China Tech gave evidence before this Commission. Their 25 evidence was straightforward, unshaken and clear. As</p> | <p style="text-align: right;">Page 59</p> <p>1 evidence were unduly harsh and largely unwarranted. We 2 beg to differ. If the evidence of China Tech should be 3 put under a microscope, equally, Fang Sheung's evidence 4 should be put under a microscope, because they are 5 focusing on the same point.</p> <p>6 I first turn to Mr Pun Wai Shan's evidence. He gave 7 three different versions of evidence. First, in the MTR 8 interview, Mr Pun said vividly and gave contrary 9 evidence that because rebars were squeezed too tight and 10 the coupler was deformed, so they would cut the rebars 11 and took a risk or took a gamble so that they appeared 12 they would be doing so, and they had the fixed the 13 rebars. Yet in the witness statement to the Commission 14 in August, he said he had never heard anything about 15 cutting of the threaded ends. But then in the police 16 statement in September, he then said in reality 17 sometimes there would be a chance of type B threads to 18 be cut, so to use as type A threads. Just to make that 19 clear, this conversion is still a cutting.</p> <p>20 Pausing at this juncture, Mr Pun's evidence that he 21 came to have seen the actually NCR157 is on 13 June 22 2018, that is before Mr Pun giving a witness statement, 23 before giving the police statement, before he came to 24 give evidence in the witness box. Yet he made no 25 mention whatsoever in the witness statement, no mention</p> |
| <p style="text-align: right;">Page 58</p> <p>1 reiterated hereinabove, giving evidence is certainly not 2 a memory test. This is particularly so given that 3 China Tech is required to give a factual account of 4 minute details which happened years ago. With respect, 5 even if there had been any discrepancies, those 6 discrepancies, in my submission, were immaterial. The 7 overall theme of the evidence of China Tech staff 8 members was that there were occurrences of the cutting 9 of threads in the Hung Hom Station site. That evidence 10 has already been summarised in paragraphs 62 to 73. 11 I do not wish to speak or repeat them.</p> <p>12 The only point I wish to make is that hindsight is 13 always perfect wisdom. Of course one may criticise: why 14 didn't you report this earlier? Why didn't you take 15 a photograph? Yet this does not mean that what one has 16 to say is incredible.</p> <p>17 I then turn to the next topic, being the evidence of 18 Fang Sheung. The evidence of Fang Sheung clearly falls 19 squarely into the heart of the terms of reference that 20 the Commission would wish to enquire upon. Fang Sheung 21 is the only sub-contractor engaged in the SCL1112 22 project. Fang Sheung is the only sub-contractor 23 conducting rebar fixing works.</p> <p>24 There has been criticism from counsel for the 25 Commission saying that my comments as to Fang Sheung's</p> | <p style="text-align: right;">Page 60</p> <p>1 whatsoever in the police statement, about this number 2 157 NCR.</p> <p>3 According to the Mr Pun, NCR157 only came to him 4 immediately before the interview, yet interestingly he 5 went there to give a reprimand to his staff members. So 6 as what reprimand he gave to the workers, he said he 7 asked them not to let that happen again, but as to what 8 not to happen, Mr Pun's evidence is that "no NCR again".</p> <p>9 We then move to consider Mr Joe Cheung's evidence. 10 Again, before giving viva voce evidence to the 11 Commission, he had given three different versions of 12 evidence. Firstly, in the MTR interview, he said he 13 would cut type B threads and turn into type A. The 14 percentage was approximately a dozen out of 100 per bay.</p> <p>15 In the witness statement of Commission in August, he 16 said he had never seen and never heard anyone cutting 17 short the rebars. Notably, he said cutting short 18 threaded bars was unacceptable and it was uncommon in 19 the industry. In the police statement he said, in 20 reality, there would be cutting of type B into type A. 21 He also mentioned the incident where five threads were 22 not screwed tightly. We all recall NCR157. It is not 23 five rebars not screwed tightly, it's five rebars being 24 cut.</p> <p>25 To put it in the mildest fashion it could possibly</p> |

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1 be, Fang Sheung's witnesses were evasive. Mr Chairman
 2 has indicated in the course of the Inquiry that
 3 a cynic -- and of course Mr Chairman is certainly not
 4 a cynic -- would call Mr Pun as lying. Being in full
 5 practice for just three months, I would not be shy to
 6 call myself as a cynic. So in my respectful submission
 7 and also in China Tech's respectful submission, both
 8 Mr Pun and Mr Cheung simply lied in their witness
 9 statements to the Commission, simply lied to the police,
 10 and to nobody's surprise simply lied in the witness box.
 11 First, there was never any suggestions to the
 12 Commission, either by way of witness statement or
 13 examination by counsel for the Commission, or even in
 14 the advent of the cross-examination of China Tech, that
 15 there was any cutting of the threaded rebars in the
 16 Hung Hom Station construction site. It was only until
 17 both Mr Pun and/or Mr Cheung being confronted with the
 18 transcripts that he admitted it.
 19 In attempting to explain why "cutting" incidents
 20 were spoken about in the MTR, they gave awestruck
 21 explanations. Mr Pun said: "That was my imagination.
 22 It doesn't mean it had happened ...
 23 Because at that time the police asked about somebody
 24 alleging that there were cutting of the threaded rebars
 25 at our site, and then I was asked under what

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1 circumstances would this be done.
 2 ... [When I said] 'This situation was very rare' ...
 3 It wasn't about actual knowledge of the couplers being
 4 cut."
 5 The situation is worse for Mr Joe Cheung. The whole
 6 process, with respect, is like watching time travel
 7 dramas where we have to go between reality and
 8 imagination. In MTR's interview, he was capable to give
 9 clear particulars as to how B threads would be cut to
 10 become A threads. On first attempt being asked by
 11 Mr Pennicott, Mr Cheung's position was that cutting
 12 B threads to A threads was completely imaginative and
 13 hypothetical. Yet, interestingly enough, when being
 14 asked further, he was able to tell the frequency of the
 15 happening.
 16 But then very shortly thereafter, Mr Cheung then
 17 again changed his stance and said they were only
 18 descriptions that he thought would happen. This
 19 theoretical and imaginative explanation was made most
 20 clear at the end of Mr Pennicott's examination. This
 21 theoretical and imaginative explanation was maintained
 22 all along in China Tech's cross-examination.
 23 But then, at the end of China Tech's
 24 cross-examination and indeed in the course of the
 25 government's cross-examination, Mr Cheung even proposed

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1 to give the underlying reasons for cutting the rebar was
 2 due to time pressure.
 3 I just wish to go through two very short excerpts of
 4 Mr Cheung --
 5 CHAIRMAN: I would just mention one thing. It's now nearly
 6 11.10. We started at 9.30, through to 11, but I took up
 7 about quarter of an hour.
 8 MR PENNICOTT: I think Mr So has another at least seven
 9 minutes.
 10 CHAIRMAN: That's what I was about to say. So let's say
 11 another 10.
 12 MR PENNICOTT: Yes.
 13 MR SO: I see. I will try my very best to finish it.
 14 CHAIRMAN: That doesn't mean just read faster.
 15 MR SO: Of course.
 16 CHAIRMAN: I don't mean that with any disrespect, but I do
 17 take into account that the shorthand writer is already
 18 at maximum sprint, I think.
 19 COMMISSIONER HANSFORD: Just to add to that, we have read
 20 all the words here.
 21 MR SO: I of course appreciate that.
 22 Of course, Fang Sheung's evidence is important,
 23 because Fang Sheung knew perfectly well that cutting
 24 threads is a very serious allegation, yet despite being
 25 confronted with this very serious allegation, they

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1 deliberately elected to play down the significance of
 2 it.
 3 In his police statement, he mentioned NCR157, but it
 4 was five threads not screwed properly but not being cut.
 5 Throughout the course of the hearing, there was no
 6 evidence whatsoever suggesting there were tenable
 7 reasons why threaded section of rebar would have to be
 8 cut, certainly not from Fang Sheung, not from Leighton,
 9 not from MTR, and certainly not other persons
 10 experienced in the field, not Intrafor, not Hung Choi.
 11 Just to risk stating the obvious, there was no one
 12 saying that cutting a type B thread into a type A thread
 13 is acceptable. Quite the opposite. We submit
 14 Fang Sheung's witnesses constantly wavering stance is
 15 the key that makes his evidence incredible. The change
 16 of evidence, to which no credible and probable
 17 explanations were given, was simply a show that those
 18 evidence could no be placed any weight.
 19 So just compare the evidence of Fang Sheung with
 20 that of Jason Poon, or evidence of China Tech. The
 21 theme of China Tech is all along consistent and
 22 unshaken, but the theme of Fang Sheung is not.
 23 If one elects to believe what staff of Fang Sheung
 24 said in MTR interview was really on a pure imaginative
 25 and theoretical possibility on a construction site, and

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| <p style="text-align: right;">Page 65</p> <p>1 indeed MTRC interview staff had got it wrong, and they 2 are not in reality, they are just imagination, one would 3 have to ask an obvious question: why Fang Sheung made no 4 attempt whatsoever to correct the MTR's report, bearing 5 in mind that MTR's report certainly at that time had 6 arisen public concerns? 7 In China Tech's respectful submission, Fang Sheung's 8 evidence given in the course of the MTR interview was 9 the truth of the matter: "On some occasions and as 10 requested by Leighton, they would carry out cutting of 11 the threaded steel bars to meet the required threaded 12 length. On other occasions and as requested by 13 Leighton, the threaded steel bars could be cut and 14 screwed into the couplers with the understanding that 15 rectification[s] would be done and ... by Leighton." 16 In short, Leighton has knowledge of the cutting. 17 More so, Leighton requested or as a fallback position 18 acquiesced to the cutting of the rebars. This is 19 accepted by legal representatives of Leighton by writing 20 to the MTR, saying: 21 "We do not believe there are any matters to address 22 from the meeting with Fang Sheung." 23 Disappointingly, staff of Leighton internally seem 24 to be, with all due respect, suffering collective 25 amnesia as to whether there was any NCR157.</p> | <p style="text-align: right;">Page 67</p> <p>1 Leighton but they were always in different locations and 2 they could not be located. 3 Indeed, Jason Poon has encountered similar 4 situation. As Mr Boulding put it most succinctly, it 5 almost sounds like a holiday camp. Indeed, this has 6 been recorded by Mr Rowsell's expert report that this is 7 not acceptable. Stepping backward, it is our respectful 8 submission that even a cage-to-cage inspection of the 9 diaphragm wall was also is not satisfactory. We accept 10 that Intrafor's cage-to-cage installation is a different 11 system with that of EWL slab installation, yet the 12 supervisory system of the diaphragm wall is highly 13 relevant as it provides a flavour to all of us how the 14 supervisory system on site actually works. 15 We will recall that a lot of the cage-to-cage 16 inspection forms were not signed by all the parties. 17 Mr Gillard of Intrafor was asked why this happened, and 18 Mr Gillard gave these explanations: probably they missed 19 a signature, sometimes people were forgetting to put the 20 signature in front of everything, sometimes people say 21 they are going to sign but they later forget. I still 22 recall when I failed my physics quiz in my secondary 23 school, I would be required to ask my mother to sign on 24 the paper. I was just wondering, if I brought my paper 25 back the other day to school without the signature,</p> |
| <p style="text-align: right;">Page 66</p> <p>1 was signed off by Mr Rawsthorne, dated 18 December. 2 That version sent to Fang Sheung dated 18 December was 3 without the manuscript details of the rectification. 4 Yet the rectifications later being dated was on 5 15 December 2015. Till the end of the hearing, there 6 seems yet to be any explanation why this backdating 7 happened. 8 Photographs were taken at the behind of the NCR. 9 The Commission will remember I pointed that out to 10 Mr Andy Ip and also to Mr Stephen Lumb. Andy Ip cannot 11 point out which five rebars were cut from the 12 photograph. Stephen Lumb could not. More ridiculously, 13 Andy Ip told this Commission that the photographs did 14 not necessarily need to recall all the cut-short rebars. 15 With respect, this is simply not acceptable. 16 I then turn to the second-last topic that I wish to 17 deal with. That is the supervisory system. The 18 supervisory system, in our respectful submission, is 19 unsatisfactory. To start with, Edward Mok accepts that 20 under the existing supervisory regime a worker could 21 actually cut a threaded end of a rebar regardless of the 22 purpose, for fraud or for changing a thread B to 23 a thread A. That supervisory condition is far from 24 satisfactory. Joe Cheung of Fang Sheung told us that he 25 wished to enquire into the cutting incident member with</p> | <p style="text-align: right;">Page 68</p> <p>1 would my teacher accept that I actually showed the paper 2 to my mother but she just forgot to sign it? 3 In the course of cross-examination, Mr Gillard tried 4 to insist that in effect a representative of Leighton 5 and MTR was indeed present but deliberately, for some 6 unknown reason, omitted to sign it. This is, with 7 respect, simply ludicrous and ridiculous evidence. 8 In respect to the supervisory system, we wish to 9 make five points. First, there were no proper 10 inspection and formal checking in the bottom mat of the 11 rebars, before the upper layer was being installed. 12 Second, should there be any inspection, the inspection 13 simply failed. The inspection failed most blatantly in 14 light of the present opening-up results. We stress yet 15 again the two threaded bars being cut short, with a gap 16 being left between the bar and the coupler. 17 Thirdly, no one made any written records whatever, 18 even the substandard installation works was identified. 19 And fourthly, even when the substandard have been 20 unearthed, no reports have been made to the seniors or 21 the frontline staff. 22 Fifthly, no one whatsoever considered it would be 23 necessary to investigate into the matter in order to 24 ferret out the particular rebar fixers doing the 25 substandard works.</p> |

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1 I conclude my submission by answering the hanging
 2 question by this Commission and asked a lot of times:
 3 why were the rebars actually cut? In our respectful
 4 submission, cutting of rebars did in fact occur and
 5 certainly not only on an isolated basis, and it was due
 6 to a combination of the following reasons. First, the
 7 issues arising out of the diaphragm wall, the threaded
 8 ends of the rebar must be reasonably aligned and if it
 9 is not reasonably aligned, the tilting couplers would be
 10 difficulty in screwing into the rebars.
 11 Second, the quality of the couplers. One will
 12 recall in the cross-examination of Mr Gillard, the
 13 couplers were in fact being covered by a plastic cap and
 14 that plastic cap would not be taken off at that stage.
 15 You have to inspect whether the threads inside the
 16 couplers were indeed in good condition.
 17 Third, hydro-demolition. In the process of hacking
 18 off the concrete and to expose the coupler, there would
 19 be further another chance to make the coupler tilt.
 20 Fourth, the derogated integrity and misconduct of
 21 rebar fixers, being Fang Sheung's workers.
 22 Fifth, in light of the tight time schedule and costs
 23 issues. One will recall Leighton would be required to
 24 call it a day, but if remedial works have to be taken,
 25 then it would be further burdening the time, it would be

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1 further incurring costs.
 2 And fifth, the failure of the supervisory system.
 3 Mr Commissioners, I am approaching the end of my
 4 submission. I implore this Commission not to adopt
 5 a mechanical and legalistic approach with handling
 6 China Tech's evidence. Rather, I implore this
 7 Commission to understand the situation of China Tech and
 8 handle it sympathetically and to consider its evidence
 9 with robust common sense in a humanised way.
 10 As I said, it would be easy to fall into the fallacy
 11 of losing sight of the wood for the trees while
 12 embarking on trivial and indeed inconsistencies in
 13 evidence, but I emphasise the consistency of the theme
 14 and the major and substantial portion of the evidence is
 15 important.
 16 Insofar as the onus of proof is concerned, there was
 17 generally no onus for any involved parties. This is
 18 apparently accepted by counsel for the Commission in
 19 their closing submission. Yet the basic principle of
 20 "he who alleges shall proof" and indeed this standard of
 21 proof is adopted in similar commissions of inquiry in
 22 Hong Kong, namely by Mr Justice Wally Yeung, as he then
 23 was, in 2007 in the Commission of Inquiry on allegations
 24 relating to the then HKIED.
 25 In the commencement of the hearing, counsel of

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1 different involved parties tried to suggest "for
 2 China Tech to be right, everyone on site must be wrong".
 3 We have the opening-up results now. Who is right and
 4 who is wrong is in the hands of the Commission.
 5 Not to forget, because of volunteering to come out
 6 to give evidence, both China Tech and certainly Jason
 7 Poon himself are risking every business and personal
 8 reputation to make these allegations and complaints. In
 9 order to say that they all act in concert to fabricate
 10 matters, every party has voluntarily assumed
 11 a tremendous burden of proof.
 12 There was a suggestion by some involved parties that
 13 some allegations that Jason Poon raised were not put to
 14 a particular witness. We adopt the position that was
 15 correctly cited by counsel for the Commission, that in
 16 an inquiry there is no duty for a particular involved
 17 party to put its case. More importantly, the rule of
 18 Browne v Dunn is not an inflexible or rigid rule, and is
 19 subject to one of the most important exceptions,
 20 enunciated by Lord Justice Morris, that if there are
 21 cases in which the other party is most distinctly,
 22 unmistakably and manifestly noticed by the other party,
 23 it is not necessary to waste time in putting questions
 24 to him upon it.
 25 In the present case, the Commission will notice that

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1 upon Jason Poon making relevant allegations, the
 2 witnesses of MTR and Leighton in question immediately
 3 filed a reply witness statement denying it. More
 4 importantly, we note that counsel for the Commission has
 5 also helpfully put the matter to the witness and the
 6 witness has equally denied it.
 7 So, on those principles, in our respectful
 8 submission, no witness has been prejudiced and equally
 9 the weight of evidence of Jason Poon should not be
 10 played down by virtue of that allegation not being put
 11 by China Tech. They were either already put by counsel
 12 for the Commission or the witness already denied it.
 13 The complaints of Jason Poon and other China Tech
 14 staff themselves might be not sufficient to prove
 15 credibility, but with all other evidence considered, one
 16 would see that China Tech's evidence was credible and
 17 Jason Poon was telling the truth.
 18 It might be tenuous evidence on its own, but one
 19 should not neglect all the circumstantial evidence, as
 20 rightly pointed out by the learned Chairman.
 21 Circumstantial evidence is like the case of a rope
 22 composed of several cords. One strand of the cord might
 23 be insufficient to sustain the weight, but three stands
 24 together may be quite of sufficient strength. With only
 25 the evidence given by Jason Poon or China Tech, there

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1 might be just a suspicion, but with all the evidence, in
 2 particular the opening-up result, a strong conclusion
 3 could be that Jason Poon and China Tech staff are indeed
 4 credible.
 5 Lastly, it remains for me -- and of course I have
 6 instructions from Jason Poon and China Tech to thank
 7 this Commission for the efforts in investigating the
 8 matters, and the staff, the Secretariat, for their
 9 assistance.
 10 I know I have just passed nine minutes from my
 11 stipulated time, but this concludes my submission.
 12 CHAIRMAN: Thank you very much indeed.
 13 I think morning tea?
 14 MR PENNICOTT: Yes. Sir, I was hoping to try to fit in
 15 Fang Sheung before the break, but in the light of the
 16 delay at the start, I think probably now would be a good
 17 time to break.
 18 CHAIRMAN: Yes. Thank you very much. 15 minutes.
 19 (11.21 am)
 20 (A short adjournment)
 21 (11.42 am)
 22 Closing submissions by MS CHONG
 23 CHAIRMAN: Yes.
 24 MS CHONG: Chairman, Professor, Fang Sheung is
 25 a sub-contractor of Leighton for the steel reinforcement

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1 work on the slabs connecting the diaphragm walls in the
 2 East West Corridor and the North South Corridor under
 3 contract 1112.
 4 In this Inquiry, so far as Fang Sheung is concerned,
 5 the issue is whether the coupler installation on the
 6 slabs by Fang Sheung compromises structural safety on
 7 the station and hence raises concerns of public safety.
 8 Both the director, Pun Wai Shan, and the chief
 9 foreman, Cheung Chiu Fung Joe, of Fang Sheung gave
 10 evidence in this Inquiry.
 11 First we start with Mr Pun's evidence. Mr Pun had
 12 been working in the bar fixing industry since 1975. In
 13 1980, he set up Ying Fai Construction Company,
 14 specialising in bar fixing construction work. In 1989,
 15 Ying Fai was renamed to Fang Sheung Construction
 16 Company. In the past decades, Fang Sheung had
 17 undertaken bar fixing works in major construction
 18 projects in Hong Kong, for example the Tung Chung bridge
 19 to Chek Lap Kok Airport and the MTR's South Island Line.
 20 Fang Sheung had a longstanding business relationship
 21 with Leighton since 1992. For each sub-contract entered
 22 into with Leighton, Fang Sheung went through stringent
 23 tendering process. In the past five years, the bar
 24 fixing work sub-contracted from Leighton accounted for
 25 85 per cent of Fang Sheung's turnover.

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1 For the bar fixing work at contract 1112,
 2 Fang Sheung entered into several sub-contracts with
 3 Leighton, namely: the sub-contract for the rebar fixing
 4 with associated works for pile caps, that is dated
 5 23 April 2014; the sub-contract for the reinforcement
 6 bar cutting, bending and fixing dated 28 August 2015;
 7 and the amendment to the sub-contract regarding "Delay
 8 recovery measures (DRM)-overtime" dated 30 April 2016.
 9 In gist, the scope of contractual duties of
 10 Fang Sheung with Leighton under contract 1112 was that:
 11 Fang Sheung was not responsible for any design on the
 12 works; Fang Sheung was only responsible for the rebar
 13 cutting, bending and installation work. All the
 14 construction materials, namely the couplers and the
 15 threaded rebars were to be provided by Leighton.
 16 The sub-contract for reinforcement bar cutting,
 17 bending and fixing was a re-measurable one, in that
 18 Leighton would re-measure and pay the work actually done
 19 by Fang Sheung. Leighton would supply Fang Sheung with
 20 working plans. Based on the plans, Mr Pun of
 21 Fang Sheung prepared the bending schedule and requested
 22 from Leighton for the right quantities of rebars.
 23 Fang Sheung charged on a per-tonne basis and the
 24 contract sum was re-measured based on the quantities of
 25 the rebars.

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1 By the amendment to the sub-contract, workers of
 2 Fang Sheung would be paid at increased rates for working
 3 overtime; and should couplers be damaged, it would be
 4 the responsibility of Leighton to repair or replace
 5 them.
 6 As to the actual operation under this sub-contract,
 7 Mr Pun was responsible for administrative work whilst
 8 the works quality and progress were controlled by his
 9 foremen.
 10 Mr Pun reiterated that it had been the principle of
 11 Fang Sheung that under no circumstances would
 12 Fang Sheung allow workers to cut the threaded section of
 13 a rebar. For those three or five reported occasions of
 14 threaded rebars being cut, Mr Pun admitted that it could
 15 be due to the shoddy, quick or negligent workmanship of
 16 his workers.
 17 To deal with the workmanship problem, Mr Cheung, the
 18 foreman, had instructed workers not to put up any excuse
 19 to cut the threaded rebar and that Fang Sheung would
 20 punish or even sack the workers should they become the
 21 subject of complaint again.
 22 NCR157 was the only warning letter Fang Sheung
 23 received from Leighton. He saw NCR157 the first time at
 24 the MTR interview on 13 June 2018.
 25 As to this sub-contract, Fang Sheung had settled the

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| <p style="text-align: right;">Page 77</p> <p>1 final accounts with Leighton save that some retention 2 money was still outstanding.</p> <p>3 As to the evidence of Cheung Chiu Fung Joe: 4 Mr Cheung obtained a trade test certificate for bar 5 bending and fixing issued by the Vocational Training 6 Council and Construction Industry Council in 2018. He 7 was the most senior person from Fang Sheung on the 8 construction site of contract 1112.</p> <p>9 As to the instruction of coupler installation: prior 10 to commencing rebar fixing works, Mr Cheung, together 11 with workers of Fang Sheung and foremen of Leighton, 12 attended the workshop of BOSA in Hung Hom for the 13 instructions, guidelines and briefings on how to install 14 couplers. Two sheets of documentation, namely "Coupler 15 installation method (standard splice -- type A)", and 16 "Coupler installation method (position splice -- 17 type B)" were shown and explained to the workers during 18 the instructions. He had not seen the BOSA document 19 headed "How to measure the thread length -- 20 Servisplice".</p> <p>21 Regarding the rectification of faulty couplers: if 22 a coupler was intact, it would only take 20 to 30 23 seconds to screw a 4 metre threaded rebar into the 24 coupler. It was only when the couplers contained 25 concrete residue or were somehow damaged that would</p> | <p style="text-align: right;">Page 79</p> <p>1 example, in area C2-3, the coupler inspection was done 2 on 22 August 2015, seven weeks before the commencement 3 of the bar fixing work.</p> <p>4 Regarding cutting of rebars: Fang Sheung had 5 portable wire cutters on site. According to the 6 evidence, there were two. It was for cutting of the 7 following rebars, the general rebars, not the threaded 8 ends. Firstly, spacer bars, and secondly bars for 9 testing; thirdly, bars to be cut into the right length 10 when the actual layout of the site was different from 11 the drawings; and fourthly, bars for providing 12 reinforcement for the core walls.</p> <p>13 Mr Cheung discussed two scenarios where the threaded 14 rebars could be cut:</p> <p>15 (a) He heard his steel fitting workers mentioning 16 cutting type B threads to convert that to type A thread 17 rebars. He did not know whether that indeed happened. 18 He had not seen any himself. He emphasised that it was 19 not the practice of Fang Sheung to do so. He would have 20 stopped workers doing so had he seen the cutting.</p> <p>21 And scenario (b): There were situations where faulty 22 couplers could not be replaced. As a remedial measure 23 taken by Leighton, a hole was drilled nearby the faulty 24 coupler and a dowel planted into the hole. Fang Sheung 25 workers would slightly cut the threaded rebars to fit</p> |
| <p style="text-align: right;">Page 78</p> <p>1 impede the installation work. It was Leighton's duty to 2 rectify the faulty couplers.</p> <p>3 After Leighton finished exposing couplers from 4 concrete, Mr Cheung would perform visual check of 5 couplers before bar fixers of Fang Sheung started their 6 work. Couplers contained concrete residue, or damaged 7 in the sense that they were somehow chipped, squashed, 8 flattened, deformed or tilted were considered 9 problematic. He would take photographs of the faulty 10 couplers and notify site foreman and engineers of 11 Leighton responsible for the area to perform 12 rectification. It was only after the problematic 13 couplers had been cleaned, rectified and replaced that 14 Fang Sheung workers would resume bar fixing work.</p> <p>15 Mr Cheung kept a site diary with photographs and 16 records of construction progress for the period from 17 23 May 2015 to 31 March 2016. The inspection and 18 rectification of couplers were recorded in photographs 19 and in his site diary.</p> <p>20 After being notified by Fang Sheung of faulty 21 couplers, Leighton would follow up within a day. 22 Fang Sheung could choose to work at another area pending 23 the coupler rectification by Leighton. Mr Cheung would 24 also inspect the couplers in advance so that the faulty 25 couplers could be rectified at an earlier time. For</p> | <p style="text-align: right;">Page 80</p> <p>1 into the faulty coupler. It was his perception that 2 leaving the faulty coupler hollow would be unsightly and 3 might create misunderstanding that the coupler was left 4 uninstalled.</p> <p>5 CHAIRMAN: Sorry, can you just help me here? "[He] 6 discussed two scenarios".</p> <p>7 MS CHONG: Yes.</p> <p>8 CHAIRMAN: Insofar as you can assist us, are we talking 9 about entirely theoretical scenarios which he invented, 10 when given the task of looking at possibilities, or is 11 it something which is borne out of experience?</p> <p>12 MS CHONG: I believe he talked about -- generalised from 13 what he heard on site, and also for the first occasion 14 about converting type A to type B --</p> <p>15 CHAIRMAN: Yes, he heard that.</p> <p>16 MS CHONG: He heard that, and I believe that must be he 17 spoke from his experience of hearing other workers.</p> <p>18 CHAIRMAN: Good. And the second one?</p> <p>19 MS CHONG: The second one, I believe his evidence is that he 20 actually saw such dowel being planted, and he himself 21 decided that leaving the coupler, the vacant coupler, 22 hollow would be unsightly, so he himself planted rebar 23 into the coupler. And in order to fit into that faulty 24 coupler, he had to slightly cut it, and he actually 25 discussed two reasons for him doing so. One is to make</p> |

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1 it slightly and the second is to prevent any
 2 misunderstanding that that was not installed.
 3 CHAIRMAN: Yes.
 4 MS CHONG: And he was speaking from his experience.
 5 CHAIRMAN: Good. Thank you.
 6 MS CHONG: Then the evidence of NCR157. According to
 7 Mr Edward Mok, engineer of Leighton, there were three
 8 incidents, the first one in September 2015, the second
 9 in October or November 2015, and the third in December
 10 2015, involving not more than eight rebars being cut and
 11 defectively installed into couplers. The defective
 12 installations were promptly rectified. It respectively
 13 took about 15 minutes, 15 to 30 minutes and one to two
 14 hours to rectify the defective rebars on these three
 15 occasions. In the second and third occasions, couplers
 16 had to be replaced.
 17 Mr Mok related the three occasions to Mr Cheung and
 18 reminded him to ensure his workers properly checked the
 19 condition of the rebars before coupler installation.
 20 Mr Cheung gave evidence that on all three occasions,
 21 Mr Mok informed him after remedial work had been done.
 22 Therefore, he did not have the opportunity to see the
 23 defective coupler connection himself.
 24 As to the first occasion, he could not recall what
 25 was said to him by Edward Mok. It did not occur to him

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1 that the defective installation related to the cutting
 2 of rebars. He did not report the incident to his boss,
 3 Mr Pun, as he felt that he was competent to handle the
 4 matter.
 5 As to the second occasion, Mr Cheung was extremely
 6 surprised as Edward Mok told him that workers had cut
 7 the threaded rebars. He tried to investigate with his
 8 workers but no one answered him. He then very severely
 9 took them to task. Seeing the seriousness in the
 10 matter, he reported the second occasion to Mr Pun, the
 11 boss.
 12 As to the third occasion, Mr Cheung fully
 13 appreciated the seriousness of the incident because
 14 Edward Mok told him that an NCR would be issued to him.
 15 He reported the matter to Mr Pun. Both Pun and himself
 16 were angry, very angry, with their workers cutting
 17 threaded rebars in defiance of the company instructions.
 18 Mr Cheung called all the workers for a briefing and
 19 gave them a stern warning that should any cutting happen
 20 again, workers would be sacked. He reminded workers
 21 that it was not Fang Sheung's duty to make good
 22 defective couplers. He briefed workers to inform
 23 Leighton if they encountered difficulties with couplers.
 24 He tasked more reliable and competent workers to the
 25 coupler installation work. He asked the more

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1 experienced workers to pay extra attention to ensure bar
 2 cutting did not happen. He personally stepped up
 3 supervision.
 4 Mr Man Sze Ho, engineer of Leighton, corroborated
 5 Joe Cheung's evidence that some days after the third
 6 occasion, he and Joe Cheung gathered Fang Sheung's
 7 workers for a briefing, during which workers were
 8 instructed not to cut rebars and to approach Man Sze Ho
 9 or Edward Mok should they encounter problems with
 10 couplers. Workers signed an attendance sheet of the
 11 briefing. That is in bundle C8, page 5552.
 12 As to the actual cause of the bar cutting, it was
 13 Joe Cheung's evidence that judging from the fact that
 14 the remedial work necessitated the replacement of
 15 couplers, the cutting of rebars could have originated
 16 from a damaged coupler. The damaged couplers escaped
 17 his inspection and were not picked up for replacement.
 18 When workers started their bar fixing work, instead of
 19 informing Leighton for replacement, workers proceeded to
 20 do things in their own way.
 21 With the procedure of checking couplers ahead of
 22 installation work, Joe Cheung reiterated that the
 23 occurrence of workers having to work on damaged couplers
 24 should not be frequent. The occurrence of workers would
 25 take it upon themselves to cut rebars would be even

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1 rarer. He had reminded his workers to draw to his
 2 attention if such damaged couplers were found.
 3 NCR157 was the only complaint Fang Sheung received
 4 from Leighton. Since the third occasion, Fang Sheung
 5 did not receive a second warning from Leighton. He
 6 first saw NCR157 at the MTR interview on 13 June 2018.
 7 There have been bar cutting experiments performed
 8 during this Commission hearing. According to the
 9 experiment done at CIC on 8 November 2018, it took
 10 47 seconds to cut a T40 bar using the portable electric
 11 band hacksaw provided by Fang Sheung. That is the type
 12 of band saw depicted in photographs D227 and D228.
 13 Joe Cheung had done a cutting test and he recalled that
 14 it took about 1.5 to 2 minutes to cut a threaded rebar.
 15 He explained that the cutting performance could be
 16 varied subject to a number of conditions such as the
 17 level of battery power and the wearing of the blade. It
 18 took at least one hour to charge up the portable
 19 electric band saw. The fully charged basically could
 20 only cut about five to eight bars. The cutter
 21 performance deteriorated as the basically went down.
 22 Pausing here, there were only two cutters of
 23 Fang Sheung. It is submitted that given the cutting
 24 experiments and the time of cutting, and that there were
 25 only two cutters, there is no capacity for wide,

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| Page 85 | 1 systematic cutting as suggested by China Tech. 2 If a rebar was not properly cut, according to 3 Mr Cheung, the edge may not be even, and it would not be 4 possible to screw into a coupler. 5 Fang Sheung did not have hydraulic cutters on site 6 as the electricity supply on site could not support the 7 higher voltage required by a hydraulic cutter. The 8 so-called hydraulic cutter that Mr Jason Poon alleged 9 workers to have been using in photograph D228 was in 10 fact a portable electric band hacksaw, and he later 11 admitted during the hearing that the one depicted in 12 photo D228 was just a portable electric band hacksaw. 13 In any event, as experiment at CIC demonstrated, 14 cutting with hydraulic cutter would deform the threads 15 of a rebar and preclude any attempt of coupler 16 connection. That is also noted by Prof McQuillan in 17 paragraph 69 of his report. 18 Regarding the photo, D228, and evidence of China 19 Technology and the expert: staff of China Technology 20 gave evidence on bar cutting. Despite the requests by 21 their boss Jason Poon, none of them made contemporaneous 22 record by taking photographs. None of them came forward 23 to enquire into the circumstances under which workers 24 were cutting the threaded rebars. 25 Photograph D228 was the only contemporaneous | Page 87 | 1 that full ultimate tensile stress of the rebar is 2 achieved with only 60 per cent engagement of the 3 threaded rebars. Prof McQuillan, Dr Mike Glover and 4 Nick Southward all came to the same view. Dr Glover 5 further explained that the safety reserve is to provide 6 for different types of threaded connections and to 7 accommodate the uncertainties and inevitable variations 8 in workmanship that can and do occur in construction. 9 Prof McQuillan noted that based on the Highways 10 Department's acceptance criterion of a 37mm thread 11 engagement, none of the threaded rebars in the 12 opening-up results up to 6 January 2019 appeared to have 13 been cut, as the engaged threads and the exposed 14 threads -- one thread equals to 4mm -- of the rebars all 15 achieved a combined length of at least 37mm. And as of 16 28 January 2019, that is the opening-up result up to 17 yesterday, it is submitted that the situation is still 18 the same. There is no concrete evidence of bars being 19 cut. 20 CHAIRMAN: Sorry, could I ask you -- the evidence appears to 21 be -- I suppose it's difficult because it didn't arise 22 earlier in evidence, and so couldn't be canvassed then 23 by way of direct question and answer with the two 24 witnesses, but we seem to have fairly extensive failure 25 to fully engage rebars into couplers. What would |
| Page 86 | 1 documentary evidence that Jason Poon was able to adduce 2 on bar cutting. Jason Poon said on 22 September 2015 he 3 saw workers cutting threaded rebars and he took 4 a photograph with his mobile phone, but he did not 5 intervene as those workers were not China Technology 6 staff. Likewise, Jason Poon did not enquire why the 7 workers were cutting the rebars. 8 Why would the workers cut the rebars in photo D228? 9 Prof McQuillan, in his expert report, analysed photo 10 D228. He elaborated that the enlarge of D228 showed 11 that the blade of the band saw, being below the level of 12 the axis of the bar, demonstrated that the bar had 13 already been cut. Prof McQuillan's postulation is that 14 workers cut a T40 20-thread type B rebar down to 15 13 threads. Prof McQuillan opined that converting 16 a type B rebar to a type A rebar, though contrary to 17 BOSA's quality assurance recommendation, was not 18 a practice compromised safety. That is in paragraph 108 19 of Prof McQuillan's expert report. 20 From the opening-up results, it is true that not 21 many rebars achieved 100 per cent engagement. 22 Prof McQuillan pointed out that there could be site 23 factors, not constitute poor workmanship, which 24 prevented the rebars from being fully screwed into the 25 couplers. Tension load tests performed on couplers show | Page 88 | 1 explain that? 2 MS CHONG: The situation is that all the workers will try 3 their very best to screw in the rebars, and as we heard 4 evidence from Mr Joe Cheung, they would firstly use 5 their hands and then use a wrench to screw in, until it 6 cannot go further. 7 Because they only receive -- they then will, in 8 their own opinion, if they cannot do it any further, 9 they will leave the work, and then they satisfy 10 themselves that that connection had been properly done 11 and they would leave for the inspectors to come and 12 check whether that is satisfactory, and if that is not 13 satisfactory then the workers will redo the work again, 14 until the coupler installation had been accepted by the 15 inspectors of Leighton and MTR. 16 So it's our submission that at that moment, there is 17 no problem raised by the supervisors of Leighton or MTR 18 and the work were properly accepted by them. So it was 19 at that moment they satisfied themselves that the 20 connection had been properly -- the installation had 21 been properly done. 22 COMMISSIONER HANSFORD: So, Ms Chong, your submission is 23 that because inspectors of Leighton or MTR had not 24 raised concerns about the bars being threaded into the 25 couplers or only being partially threaded into the |

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| Page 89 | Page 91 |
| <p>1 couplers, then Fang Sheung was satisfied? Is that your 2 submission? 3 MS CHONG: No, I'm not saying that -- we now have the 4 opening-up results. 5 COMMISSIONER HANSFORD: Yes. 6 MS CHONG: We don't know what happened after the inspection 7 and up to this moment of opening-up, and the result 8 is -- we have the results -- some of them were not fully 9 engaged, but I would submit that to a large number, they 10 were properly engaged and fully up to the standard. 11 There are some samples of engagement which failed 12 the required standard, and I would say that at that 13 moment, Fang Sheung's workers had tried their very best 14 to achieve what they were required to achieve. As to 15 whether that was up to standard, that is up to the 16 inspection of the supervisors of Leighton and MTR. 17 COMMISSIONER HANSFORD: I think that's what I said. 18 MS CHONG: Yes. So it would be unfair now to trace back to 19 criticise each particular worker. If there was a 20 problem at the time, the workers of Fang Sheung would be 21 very happy to screw out the rebar and to do it again, 22 and they were not properly trained -- the Fang Sheung 23 workers, they were not trained as to how to inspect 24 a proper installation. They were only trained as to how 25 to install the coupler, as we can see the instruction --</p> | <p>1 As to the three occasions of bar cutting, it was 2 most regretful that workers, when encountering 3 difficulties with couplers, proceeded to tackle the 4 problem in their own way. Dr Glover, speaking from his 5 experience, said that workers generally want to do 6 a good job. They do not get up in the morning and 7 maliciously decide to cut ten rebars that day. The 8 construction industry in Hong Kong still has good 9 operatives. This is quoting Dr Glover's evidence on 10 Day 43, page 124, lines 2 to 25. 11 On the other hand, the construction of Hung Hom 12 Station was a complex and difficult project involving 13 massive use of couplers. When facing with a difficult 14 task, workers embarked on a foolish course of cutting 15 threaded rebars. It is submitted that the workers, 16 albeit reckless, were not malicious and they were acting 17 out of misconceived sense of responsibility to get the 18 job done. 19 COMMISSIONER HANSFORD: Just pausing there a second, 20 Ms Chong. Is it your submission that they were 21 reckless? 22 MS CHONG: The cutting of the rebars is extremely careless, 23 I would say, and negligent in this case. 24 COMMISSIONER HANSFORD: So is it your submission that the 25 workers were reckless?</p> |
| Page 90 | Page 92 |
| <p>1 the evidence on the instruction. They were only given 2 as to how to -- the instruction as to how to connect the 3 coupler. They were not claimed as an inspector. 4 COMMISSIONER HANSFORD: No. 5 MS CHONG: So that's how it happened. 6 CHAIRMAN: All right. Thank you. 7 MS CHONG: And they were not listed as T3 or those under the 8 QSP, I mean the workers. 9 This is my submission regarding Fang Sheung's case 10 in this Inquiry. Based on the contractual arrangements 11 of Fang Sheung and Leighton, Fang Sheung had no reason 12 to cut threaded rebars and would not ask its workers to 13 do so. According to the re-measurable sub-contract, 14 Fang Sheung was paid according to the tonnes and 15 quantities of rebars fixed, calculated under the bending 16 schedule. It was not the contractual duty of 17 Fang Sheung to make good faulty couplers. Should any 18 faulty couplers delay the progress of the work which 19 necessitated any overtime working, Fang Sheung workers 20 would be paid at an increased rate. On the other hand, 21 any cutting of the threaded rebars would entail extra 22 cost, labour and risk. It took only 20 to 30 seconds to 23 screw in a rebar but at least 47 seconds to cut a rebar. 24 There was no gain but every harm to Fang Sheung to cut 25 threaded rebars.</p> | <p>1 MS CHONG: Take it to the highest, the workers may be 2 careless. 3 COMMISSIONER HANSFORD: You use the words here "albeit 4 reckless". 5 MS CHONG: Could be reckless, yes. 6 COMMISSIONER HANSFORD: Right. 7 MS CHONG: Because they were acting in defiance of company 8 instruction. The company had given proper briefing to 9 the workers, and on those isolated incidents the workers 10 breached the company code of Fang Sheung in cutting the 11 rebars, and I would say they were extremely negligent in 12 that -- they were grossly negligent in that sense. 13 COMMISSIONER HANSFORD: Right. 14 MS CHONG: And it was never the practice or policy of 15 Fang Sheung to encourage -- to ask the workers to cut 16 the rebars. 17 CHAIRMAN: Yes. 18 MS CHONG: We see that evidence reveals that the cutting of 19 the threaded rebars would be exceedingly rare. 20 According to the evidence of Leighton, there were three 21 incidents, and the MTR evidence, five occasions. All 22 have been picked up and remedied. After the three 23 incidents, on 15 December 2015, workers were briefed, 24 warned, and inspections were stepped up. Fang Sheung 25 continued to perform and deliver its works which was</p> |

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| Page 93 | Page 95 |
| <p>1 accepted and paid by Leighton. Fang Sheung received no 2 further complaints thereafter. 3 My submission would be that after the third 4 incident, there would be no such circumstances of 5 workers cutting the rebars recklessly or carelessly, and 6 all have happened before the third incident -- the 7 cutting stopped after the third incident, that is 8 15 December 2015, because of the more stringent 9 supervision of Fang Sheung and also more stern warning 10 from the company. 11 COMMISSIONER HANSFORD: Is that borne out by the evidence 12 from the opening-up? Are you saying that all of the 13 instances where unconnected bars and possibly cut bars 14 have been found in the opening-up, they all happened 15 before that warning? Is that your submission? 16 MS CHONG: Yes. There is no concrete evidence as to when 17 those bars were connected in those opening -- from the 18 opening-up results, there is no evidence as to when that 19 was done. 20 COMMISSIONER HANSFORD: Well, there is, because we know the 21 locations and we know when the concrete was poured. So 22 there is evidence as to when it was done. 23 MR PENNICOTT: It would take some time to work it out. 24 COMMISSIONER HANSFORD: It would take a bit of time, but 25 that's what I was wondering: have you done that?</p> | <p>1 I would also submit that it was only out of 2 individual workers' behaviour that there was cutting and 3 they cut it for the sake of convenience. It's most 4 unfortunate but after the third incident, there was more 5 stringent supervision and I would submit that those 6 cutting, bar cutting, were just isolated events and have 7 already been remedied. 8 As to Mr Jason Poon's evidence, I also concur with 9 the closing submission of counsel for the Commission, in 10 paragraph 65, that it is very difficult to believe 11 anything said by Mr Poon. 12 Mr Poon once said that there were as many as 30,000 13 threaded rebars having been cut, but later he reduced 14 the figure to around 1,000, arbitrarily, and it is 15 difficult to discern any basis for his estimate of the 16 number of these bars. 17 China Technology criticised the credibility of Pun 18 Wai Shan and Joe Cheung, but here we wish to say that 19 Mr Jason Poon, if he is so upright as he claims himself 20 to be, and according to his evidence, as early as 21 22 September 2015 he knew all those cuttings and he 22 alleged to be widespread and systematic, then as such 23 an upright citizen why would he still pour the concrete 24 and bury everything up, and why should he wait until 25 January 2017 to raise the complaint, when he had</p> |
| Page 94 | Page 96 |
| <p>1 MS CHONG: I have not yet worked out the time. 2 MR PENNICOTT: Neither have I. 3 MS CHONG: But my submission is this. After the third 4 incident, there was more stern warning to the workers 5 and there was more supervision from Fang Sheung and from 6 Leighton, and there was no single complaint of the 7 workers received from -- there was no complaints of 8 Fang Sheung workers doing anything that would merit 9 a complaint from Leighton. And based on that, the works 10 were then delivered by Fang Sheung and they were 11 accepted by Leighton, and eventually there were no 12 further complaint letters received. 13 I would submit that it seems, on the evidence, there 14 is no issue with the work of Fang Sheung's workers at 15 that time. 16 CHAIRMAN: Good. Thank you. 17 MS CHONG: If there were any issue, that would have been 18 raised and a complaint letter would be received, but 19 there is none, and the final account had been settled. 20 Here, I would respectfully adopt the analysis of 21 counsel for the Commission, the paragraphs in their 22 closing submission, paragraphs 163 to 171, that the bar 23 cutting is just isolated events and they are not 24 systematic and widespread cutting as suggested by 25 China Tech.</p> | <p>1 financial issues with Leighton? We submit that Jason 2 Poon's complaint all along has been motivated by his 3 commercial dispute with Leighton and his credibility is 4 in serious doubt. 5 As to the workers of China Technology, their 6 observations were out of context, momentary, and at 7 a distance, from imperfect angles. Some of the workers 8 say they observed the incident from 10 metres away, and 9 there was no contemporaneous records, such as photos, 10 and with the lapse of time they could only recount their 11 observation from fading memory and yet there was no 12 specific reason for them to remember such observations 13 at the time when they observed what was happening. 14 All of them say that they did not investigate with 15 the workers cutting bars, as that did not concern them. 16 It is submitted that their evidence is equivocal and at 17 best just their impression. Mr Li Run Chao said that he 18 saw bar cutting on 12 January 2015 in area B which in 19 fact had already been concreted at the material time. 20 This is just an example of how unreliable their 21 observations could be. 22 Here, I also adopt the submissions of counsel for 23 the Commission in paragraphs 65 to 89, that according -- 24 if what the workers of China Technology observed was 25 indeed right, reliable, then it could be a possibility,</p> |

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| Page 97 | Page 99 |
| <p>1 highly possible, that the cutting was converting type A 2 to type B, because judging from the length of the bars, 3 the threaded length and the section that was cut, it 4 could highly be possible that the cutting was the 5 conversion of type A to type B, and if that is the case 6 there is no relevance to structural safety, as we heard 7 from Prof McQuillan that converting type A to type B 8 would not pose any structural safety issues. 9 Here, the expert evidence, in particular -- we adopt 10 the expert evidence, in particular Prof McQuillan, 11 Dr Glover and Mr Nick Southward's expert opinion, that 12 Hung Hom Station is structurally safe. 13 As a concluding remark: the Hung Hom project is 14 a complex and difficult one. During the long span of 15 time, that is from 2013 to 2016, when Fang Sheung was 16 involved in the project and -- it is Fang Sheung's 17 submission that all the workers had tried very hard and 18 they endeavoured to do a good job there. 19 COMMISSIONER HANSFORD: Sorry, Ms Chong, how does that 20 reconcile with your point that some of them were 21 reckless? 22 MS CHONG: They tried they very best to do a good job, and 23 it is unfortunate at times -- because of the complex and 24 difficult job, at times they encountered some 25 difficulties with couplers, and some of the workers,</p> | <p>1 the experts, and being of no relevance to the structural 2 safety, they would not raise any public concern -- they 3 would not compromise the structural safety, and I would 4 submit that the coupler installation by Fang Sheung in 5 this case would not raise any concerns for public 6 safety. 7 CHAIRMAN: Good. Thank you very much indeed. 8 MS CHONG: Those are my submissions. 9 CHAIRMAN: Thank you. 10 Yes, are you happy to commence immediately? 11 MR CONNOR: I am, sir. 12 CHAIRMAN: Good. Thank you very much. 13 Can I just mention one thing -- I'm not sure where 14 I look for the assistance from -- but at some stage, if 15 somebody could help me -- we talk about couplers and 16 I know the question of how many couplers has arisen, and 17 it may be that somebody -- maybe I have forgotten even 18 from the Commission's own submissions how many were, in 19 round figures, intended for the entire project, and then 20 of course we have the trimming of the EWL East Wall, and 21 that would have reduced it, and what we were left with. 22 I think it is necessary to give an overall 23 impression of the size of the contract and the 24 importance, or lack of it, of couplers. 25 I'm looking at you, of course, Mr Connor. I'm not</p> |
| Page 98 | Page 100 |
| <p>1 despite clear instruction from the company, tried to get 2 the work done but they breached company instructions and 3 they took the matter into their own hands, and it was 4 only those isolated incidents -- we admit that they were 5 isolated incidents of workmanship problem, substandard 6 workmanship problem -- but as happens in all 7 construction projects, there must be and there were 8 incidents of substandard workmanship problems in the 9 construction site. 10 So we admit there were occasions of substandard 11 workmanship problems, but in general Fang Sheung had 12 tried to work hard and do a good job. There is no 13 financial motivation for Fang Sheung to cut corners such 14 as cutting the rebars, because from the company 15 perspective -- from the commercial arrangement between 16 Fang Sheung and Leighton, there is no reason at all for 17 Fang Sheung management to allow such cutting. So my 18 submission is, at times of difficulties, the workers 19 failed to comply with the company instruction, and such 20 unfortunate substandard workmanship occurred, and those 21 were isolated incidents. 22 CHAIRMAN: Good. Thank you. 23 MS CHONG: In any event, I would submit that those isolated 24 incidents had either been remedied or had no relevance 25 to structural safety, because we heard the evidence of</p> | <p>1 suggesting you have those details. 2 MR PENNICOTT: I don't think so. 3 MR CONNOR: I think Mr Pennicott has it at its fingertips. 4 CHAIRMAN: In which case that's fine. 5 MR PENNICOTT: That's very optimistic. 6 MR CONNOR: But there is an element of what I hope to share 7 with you in the next half-hour or so that perhaps 8 touches upon -- 9 CHAIRMAN: Good. I have laid my marker and I'm sure 10 somebody will respond in due course. Thank you. 11 Closing submissions by MR CONNOR 12 MR CONNOR: Sir, professor, good afternoon. You will be 13 aware that researchers into the effectiveness of public 14 speaking identify that the two worst times in which to 15 challenge and engage an audience are before lunch and 16 after lunch. Before lunch is only the second-worst, so 17 good luck, Mr Coleman, is all I can say. But mindful of 18 the challenge, I will endeavour to keep to a half-hour 19 or so. 20 You have the submissions for Atkins before you and 21 I'm sure that you have both had the opportunity of 22 reading them. 23 CHAIRMAN: We have, yes. As with all, we've been through 24 and we've raised with each other any queries or 25 impressions and the like.</p> |

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| Page 101 | Page 103 |
| <p>1 MR CONNOR: Thank you, sir. So what I intend to do is take 2 you very much across the surface and really to 3 concentrate on one or two areas. Please feel free to 4 stop me at any time if I have skirted over something you 5 are interested in.</p> <p>6 CHAIRMAN: Yes.</p> <p>7 MR CONNOR: So thank you, sir and Professor.</p> <p>8 Paragraphs 1 to 4 are introductory in nature and do 9 not need any further comment. The structure of the 10 closing submissions are set out in paragraph 5 and the 11 subparagraphs to that. As you have read, we deal 12 firstly with the deviation in the as-built condition of 13 the eastern D-wall and the EWL slab, and within that 14 three points: Atkins's roles and responsibilities; 15 secondly, the involvement in the first change and the 16 second change; and thirdly communication among the 17 teams. It's on those latter two points that I would 18 intend to spend more of my time with you this afternoon.</p> <p>19 Then we deal with the preparation of as-built 20 drawings and obtaining BD approval, and then dealing on 21 page 4, paragraph 5.3, with the permanent works design; 22 5.4, such knowledge as there was of rebar cutting; and 23 finally some observations for the future.</p> <p>24 So against that background, sir and Professor, to 25 move to the first of those, and that begins at</p> | <p>1 experts, against the background that it's not their 2 favoured approach. I think that was clear. But 3 an acceptance that there was no evidence of that. And 4 the benefits which were set out in Mr Blackwood's 5 evidence were agreed with by Mr Buckland of Leighton in 6 terms of synergy and the sharing of knowledge and the 7 smoothness with which matters might proceed.</p> <p>8 That is closed off towards the end of section 11, at 9 11.12, where there was some mention by Mr Rowsell of 10 other recent examples he was aware of, and at 11.13 -- 11 the point I said I would return to -- is where Mr Yueng 12 of Pypun mentioned that there had been a question raised 13 which his company had looked into at the end of December 14 2015 and into 2016 but had concluded that there was not 15 an issue.</p> <p>16 But what you might recall is that the particular 17 question raised concerned cost and whether or not there 18 was a cost issue arising due to multiple remuneration, 19 and in fact there was a cost audit that had been carried 20 out at that time. So it was a very limited but 21 important respect which was looked at at that time and 22 concluded overall.</p> <p>23 So that leads me to the foot of page 9 at 24 paragraph 12, and I respectfully suggest that you would 25 be entitled to find that there was no actual or</p> |
| Page 102 | Page 104 |
| <p>1 paragraph 6, under the broad heading of "Deviation in 2 the connection of the east D-wall", to (a): did the 3 roles and responsibilities, the dual role, if I can call 4 it that, give rise to any perceived or actual conflict 5 of interest? This was a point which I think arose 6 during the course of the Commission itself and, as you 7 will have read, noted at paragraph 7, at no time during 8 the project was any actual conflict of interest in 9 existence, according to the evidence, nor indeed 10 according to the evidence was one perceived by anyone at 11 any point, with the exception of one small point which 12 I will come back to, if I may, in just a moment.</p> <p>13 The possibility of that dual role is noted and 14 envisaged at the outset of the procurement of 15 consultancy. That's in paragraph 9.</p> <p>16 And the point set out at paragraph 10 is that this 17 was not a single use of the dual role on the Shatin to 18 Central line; there were at least four other instances 19 we were told about by the witness from Pypun.</p> <p>20 So the evidence on which this broad proposition 21 relies is set out in section 11, which runs between 22 pages 6 and 9. In broad terms it goes as follows. 23 There was no suggestion during the project of such 24 a conflict arising. That was accepted, as you will see 25 at 11.3, 11.4 and 11.5, by the project management</p> | <p>1 perceived conflict of interest, and importantly this, 2 that in the absence of that there clearly can be no 3 connection between such an actual or perceived conflict 4 of interest with anything else that has concerned you in 5 the course of this matter. None of that, sir and 6 Professor, does damage to a forward view, which I'll 7 come back to, in terms of what one might have for the 8 future.</p> <p>9 (b) begins at page 10 and at paragraph 13, and that 10 is the question of sufficient separation of Atkins' 11 personnel. As I note in paragraph 14, from the outset 12 the intention was to keep the teams separate and, as 13 I go on in paragraph 14 to say, with a few isolated 14 exceptions, caused by the demands of the complexity and 15 programme of the project, this was achieved. There's 16 reference there to Mr Blackwood's evidence in the 17 footnote.</p> <p>18 The benefit of the lines of communication is 19 identified at the beginning of paragraph 15, but it is 20 accepted, certainly by Mr Blackwood and certainly by me, 21 that at a senior level there was a small degree of 22 overlap which allowed for better management of design, 23 and these senior people were aware of the 24 responsibilities. I think that's the critical point 25 I would convey to you gentlemen, if I may, and that is</p> |

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| <p style="text-align: right;">Page 105</p> <p>1 that it is a small overlap at a senior level that 2 existed.</p> <p>3 Paragraph 16 is the robust process point which 4 Mr Blackwood was very strong on. The formal process was 5 always followed, and this, if you like, underpins 6 everything, and indeed where the process was not 7 followed is where we have seen matters that have 8 concerned you. Team B prepared submissions which were 9 passed to Leighton, in turn to MTRC's construction 10 management team, then to the design management team, and 11 then to team A. Mr Leung of MTRC was very strong on 12 that, and also, if I may add for your notes, this was 13 further added to by Dr McCrae in his witness statement 14 at J4/J3347, and in Mr Blackwood's transcript at T33/72 15 and 75.</p> <p>16 That small overlap that I described earlier on was 17 accepted, as you will see in paragraph 17 and the 18 footnote, by the project management experts, Mr Huyghe 19 and Mr Rowsell. As I conclude in this section, there 20 was never, during the project, any issue raised about 21 that overlap. There was no evidence, as I say in 22 paragraph 20, received by you to suggest that that small 23 overlap had in itself caused an issue which has 24 otherwise concerned this Commission. Accordingly, that, 25 while it is a matter that you have properly looked into,</p> | <p style="text-align: right;">Page 107</p> <p>1 a note of care, that I have certainly sought to take in 2 these submissions and which I know that, sir, you, and 3 you, Professor, will take also -- it is to avoid the 4 risk of conflation of issues which are in fact quite 5 separate, of strands of evidence which are quite 6 separate, indeed. So when we come on to look at 7 temporary works submissions as against responses to 8 technical queries as against permanent works 9 submissions, one really has to look at them each and on 10 their own, to ask what do they amount to and what do 11 they convey, in particular at the time, and what to you 12 do they convey with the benefit of all the evidence that 13 you have seen and heard.</p> <p>14 What I identify in paragraph 29 firstly in relation 15 to the first change is I think clear from the evidence. 16 The first change was instigated by Intrafor through 17 Leighton to improve the constructability of the D-walls. 18 Atkins only became aware of that once the D-wall had 19 been built and they were issued the as-built drawings 20 for review. That's picked up also, I think, and 21 addressed in the Commission's submissions at 22 paragraph 191, et cetera.</p> <p>23 Atkins team B was then asked to prepare design 24 calculations, and this, as you will recall, all dealt 25 with a design submission to justify the omission of</p> |
| <p style="text-align: right;">Page 106</p> <p>1 should reach, as I respectfully suggest, the conclusion 2 that is set out there.</p> <p>3 The approval of additional services is the third 4 point in this, which I will deal with even more quickly 5 than the first. This is a matter with multiple strands, 6 which you have read and which I don't propose to take 7 you into in any detail, simply to take you to the 8 proposed finding, if I may, at paragraph 28. The point 9 was raised, and I think it was really quite late in 10 evidence, that it was a matter of contract that if 11 Atkins were to be asked as part of the team B scope to 12 move into dealing with matters of a permanent works 13 nature, then some engineer's approval was required. You 14 will see there the conclusion that I would suggest is, 15 to the extent that is so, it wasn't for Atkins to do it, 16 and anyway it was something which appears to have been 17 done informally by all of those to whom the engineer had 18 delegated approval because they were all aware of it and 19 involved in it. And in any event, as I conclude there, 20 nothing really turns on this as far as your 21 considerations are concerned.</p> <p>22 So if I may turn to an area on which I will take 23 a little bit more time, and that is the involvement in 24 the first change and the second change in connection 25 with the D-wall and the EWL slab. If I might mark</p> | <p style="text-align: right;">Page 108</p> <p>1 U-shaped bars, the U-bars, at the top of the D-wall, 2 such that they would not be detrimental to the 3 structural integrity of the D-wall and the overall 4 design.</p> <p>5 Critically here, as far as that is concerned, what 6 I have referred to in terms of U-shaped bars we will 7 come back to, most immediately in paragraph 31, because 8 it's there that we see that in fact that change, which 9 came out of team B, unusually, because this was 10 a proposal being made through the contractor for 11 a change to the permanent works to embrace what was 12 there, was then agreed to by MTR, and that made its way 13 eventually into what we have looked at often as 14 PWD-59A3.</p> <p>15 I just pause at that point and go back to my word 16 "conflation". I think it's really important to note and 17 recall that this is the only occasion that we have of 18 any permanent works submission being generated within 19 team B, and that particularly for this particular 20 reason. Now, PWD-59A3 is important for another reason, 21 which I'll come back to in just a moment.</p> <p>22 As I move on, in paragraph 32, the first change, as 23 it is called, is accepted by all parties. BD approved 24 it, eventually, in submissions made in December 2015 and 25 April 2016, and you will recall, I think, that Dr McCrae</p> |

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1 was asked about this because -- and just to highlight
 2 this -- at the critical time, when we come to the second
 3 change, the working drawings which were the subject of
 4 the submissions to BD remained the working drawings.
 5 They remained the drawings which captured the original
 6 design intent. They certainly didn't involve the
 7 breaking down of D-wall and they certainly didn't
 8 involve the use of the through couplers. That remained
 9 the constant as far as the issued working drawings was
 10 concerned, and we will come back to that in the context
 11 of 59A3.
 12 The proposed finding is concluded there and is
 13 itself pretty innocuous, because it is, as far as Atkins
 14 is concerned -- they were brought in to support the
 15 achieving of retrospective acceptance of the change and
 16 updating the working drawings to reflect it.
 17 CHAIRMAN: Just help me a second again.
 18 MR CONNOR: Of course.
 19 CHAIRMAN: As far as the first change was concerned, that's
 20 the omission of these U-bars, was that limited to
 21 a particular part of the D-walls, or was it uniform
 22 throughout?
 23 MR CONNOR: No. It's a particular part.
 24 MR PENNICOTT: It's areas B and C.
 25 CHAIRMAN: I thought it was just that.

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1 MR CONNOR: Right.
 2 CHAIRMAN: Areas B and C.
 3 MR CONNOR: Right. Of course that becomes important when we
 4 look at the TWD submissions which we will come on to
 5 a moment.
 6 CHAIRMAN: Remind me again, why areas B and C?
 7 MR PENNICOTT: Sir, areas B and C of the east diaphragm
 8 wall.
 9 CHAIRMAN: That's right, yes.
 10 MR PENNICOTT: Because obviously, as we know, the west
 11 diaphragm wall was completely differently designed.
 12 CHAIRMAN: Of course. The west diaphragm wall, it all sits
 13 on top.
 14 MR PENNICOTT: And equally area A, also slightly differently
 15 designed, and therefore didn't involve the omission of
 16 U-bars.
 17 CHAIRMAN: Thank you.
 18 MR CONNOR: Thank you, sir, and thank you, Mr Pennicott.
 19 The only additional point to make here is
 20 a postscript, and it's one that I note for your notes
 21 because it came quite late in the evidence before
 22 Christmas, but you will find it in the evidence of
 23 Mr Jonathan Leung, Man Ho Leung, and he gave evidence on
 24 Day 36, and you will find his witness statement and also
 25 his transcript at Day 36, page 58. It is Mr Leung, as

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1 may recall -- and I think his statement is found at
 2 G2075 of the government bundle -- who talks about how
 3 this non-conformity that was dealt with in the first
 4 change was approached from a government perspective.
 5 The relevant parts of his witness statement are
 6 paragraphs 31 to 35.
 7 But just by way of backdrop, because this is
 8 important for something I will come back to in a moment,
 9 it is in paragraph 33 where he is referring to a number
 10 of exhibits, in particular those that appear in G11/8586
 11 et sequitur, and also those other exhibits he refers to
 12 in the paragraphs I mentioned, that it's at this point
 13 that it has been raised with those involved that all
 14 proposed changes to working drawings for diaphragm wall
 15 would have to be approved before relevant works could be
 16 allowed to proceed on site; and they would be submitted,
 17 from that point onwards, to an agreed timetable. All
 18 remedial works would be carried out, site supervision
 19 would be corrected. And this is in May 2015, bearing in
 20 mind that the second change we are about to talk about
 21 begins in about August of 2015.
 22 An important postscript, if I might suggest, and
 23 I will come back to that.
 24 The second change I start dealing with in
 25 paragraph 34. Like a number of my friends, the

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1 difficulty, if you like, when we start talking about the
 2 second change is that we inexorably find ourselves
 3 talking about TWD-4B2 and so on, but of course it didn't
 4 actually concern the second change at all. It is
 5 something which has been pointed out by certain
 6 witnesses as helping their justification for what
 7 happened in the second change.
 8 I set out the position on this from paragraph 36
 9 onwards. The TWD submission, which included 4B2, which
 10 referred to missing U-bars in the D-wall and the top of
 11 the D-wall being trimmed down -- just what we have
 12 spoken about in relation to the first change, not the
 13 second change but the first change. This, as I have
 14 noted at the bottom of this page, was never submitted to
 15 MTRC or team A.
 16 So, when we come to consider, sir and Professor, who
 17 knew what about what sat within the words of TWD-4B2, it
 18 is important to remember it didn't go outside team B and
 19 Leighton. It didn't go at all to MTR.
 20 Then, on page 18, you will see where I begin the
 21 reference to 4B3, which was a revision of 4B2. The
 22 objective, as I note there, was to enable the execution
 23 of the works to 0.5 metres to commence to produce the
 24 temporary load cases. It was not, as I say there,
 25 intended to be a submission for a change to a permanent

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1 works design. It provided insufficient detail for that
 2 purpose. This is picked up by the government in their
 3 closing submissions at paragraph 126.
 4 Again, at this point, this question of the
 5 documents, the drawings, the detail, which would require
 6 one to build what is being described there, is a point
 7 we will come back to, and you will recall a lot of
 8 evidence from the experts on this as well as Dr McCrae,
 9 but nothing provided at that time to assist with that.
 10 The evidence that I rely upon in relation to this
 11 point is set out at paragraph 38. Noting, as we go down
 12 the page, that at the foot of the page, 59A followed the
 13 first change; it did not refer to breaking down of the
 14 D-wall.
 15 At paragraph 38.5, there is then the question of
 16 DAmS 310. Just pausing at that point, it is right to
 17 say that, as the Commission have said at paragraph 202,
 18 that as far as 4B3 is concerned, it continued to contain
 19 a reference to the breaking down of the D-wall, and you
 20 will remember that reference in the construction
 21 sequence section at paragraph 6.2, and Dr McCrae was
 22 asked about that and he candidly said it shouldn't have
 23 been there. The point there is that it shouldn't have
 24 been there because it was no longer of relevance. It
 25 had been apparently something discussed between the

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1 parties earlier that summer, but when we want to look at
 2 what was live in terms of construction drawings, or
 3 drawings for construction, as at summer of 2015 -- and
 4 by that I mean July to August -- it is, as I note at the
 5 beginning of 38.5, PWD-59A3 that is relevant, it is
 6 DAmS 310 that is relevant.
 7 And as I say at the end of this paragraph, the
 8 working drawings reflected the position as approved by
 9 BD based on couplers and no breaking down of the D-wall.
 10 The position in 38.6 is the one that I alluded to
 11 a moment ago, and which I think you will both recall.
 12 The working drawings were never subsequently revised to
 13 reflect the work now understood to have been constructed
 14 in the second change. The working drawings that were
 15 issued are the only ones that were out there for
 16 construction. Dr McCrae has referred to that and said
 17 that drawings and designs would always take precedence
 18 before any statement, for example, in a temporary works
 19 document or any other kind. That was agreed by
 20 Mr Rowsell, and it is picked up in the government's
 21 closing submission at paragraph 123, I think also in
 22 MTR's at 167, and certainly in the Commission's at
 23 paragraph 233.
 24 As I close, on this page, sir and Professor, as you
 25 will have read and as you recall, Atkins just did not

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1 know about the second change that had apparently been
 2 effected from as long ago -- from as early, pardon me,
 3 as August 2015 and to as late, we recall being told, as
 4 January 2016, over that long period, and they have
 5 explained why. They just were not in sight and they
 6 were certainly never advised by Leighton, and there is
 7 no evidence whatsoever, as I say in 38.10, that they
 8 heard of it.
 9 We all heard and respect Mr Huyghe's experience and
 10 his reference to it being inconceivable that the design
 11 consultant would not know about it, but with respect to
 12 him, inconceivable it might be to him, but the evidence
 13 before you is that they didn't know and it's as simple
 14 as that. That doesn't detract from his experience. It
 15 just doesn't match it because that is the evidence that
 16 we have here.
 17 Now, just pausing at that point, following my
 18 proposed finding in that regard, it is worth I think
 19 pausing for breath here, at least in my part if no one
 20 else's, to remind ourselves what the second change
 21 involved before we come on to the communications point.
 22 Sir, you pre-empted me a little bit but not too much
 23 because I know Mr Pennicott is on the case, on the
 24 couplers, but in relation to the scale of the change, of
 25 what was involved in the second change. There is

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1 a helpful drawing which we have looked at before, and
 2 that is found in the bundles at C26494 and the following
 3 page.
 4 I'll wait until it's up on the screen.
 5 CHAIRMAN: Yes.
 6 MR CONNOR: You remember this one because it was part of the
 7 documentation which was I think produced in the late
 8 autumn of 2018, following -- and as part of the joint
 9 statement between MTR and Leighton, and on it you will
 10 see the areas marked where the original coupler
 11 connection has been used, and that where the new
 12 connection has been used with through-bars, we have
 13 a legend at the bottom part of the drawing showing the
 14 type 1, type 2, type 3, type 4 arrangements, and that is
 15 then continued on drawing C26495, which identifies the
 16 same detail in other parts of the structure.
 17 Now, this is relevant, I think -- sorry, of course
 18 it's hugely relevant, and it's relevant firstly to the
 19 discussion which we had yesterday, I think perhaps
 20 Mr Boulding and other colleagues were covering it, in
 21 relation to the structural stability of the whole
 22 station box, because -- this is not an area I have to
 23 get into but in terms of coupler issues and so on, you
 24 might form a view that in fact the numbers that are
 25 affected in terms of those that follow the original

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1 coupler schedule are rather limited, and this is
2 evidenced by this.

3 The other thing which I won't even attempt to do,
4 sir, but Mr Pennicott as always is more bold than me and
5 probably is measuring it as we speak, but the overall
6 length of the diaphragm wall, I am told -- the eastern
7 diaphragm wall -- as shown in these drawings, as
8 affected by the breaking down of the D-wall, is around
9 about 280 metres. You would find that -- again, I don't
10 wish to give evidence here and I'm not seeking to, but
11 as an understanding which I think the Commissioners may
12 have already -- the area in which the type 1
13 arrangements are to be found extends to about 171 metres
14 of that length; type 2, around about 16.4; type 3, 15.5;
15 and type 4, 37.3. So about 280 metres for area B and C,
16 of which 241 involves through-bars.

17 Just as a little postscript to that, if I may come
18 back to it in just a couple of minutes, there is one
19 panel within there, EH74, which is within the type 2
20 category, which extends to about 2.8 metres. I mention
21 it here because if you remember, it was the subject of
22 TQ34.

23 So, having paused for a short breath at that point,
24 that's a backdrop to really what I'd like to say in the
25 next section, which is all about communication issues.

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1 Chairman and Professor have my point, I'm sure,
2 about conflation of issues, and what it is that one
3 really needs to take from each part of the communication
4 that has apparently flowed between Atkins team B, Atkins
5 team A and Leighton and MTR respectively.

6 I think when one looks at that, if I may say, one
7 also has to -- while also being mindful of the
8 conflation point -- think of this: what is it about that
9 communication which, received by a skilled, experienced,
10 sophisticated construction professional, working on
11 a major infrastructure project, would reasonably cause
12 him or her to do something, to do something in
13 particular?

14 I think, when one thinks about it in that way, it is
15 really quite important when one looks to see what
16 actually is it that was being conveyed in these
17 communications, and would that reasonably lead to, as
18 a causal link, if you like, the thing which was done by
19 that construction professional I've just described.

20 So, against that background, what I set out in
21 paragraph 41 is something which I don't think is really
22 picked up in the submissions of my friends -- I don't
23 think in MTR's submission, where they cover it at
24 paragraph 167, and I think not in the Commission's at
25 paragraph 203, and the point is really this, that

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1 notwithstanding what Mr Rowsell and Mr Huyghe said in
2 their earlier reports, and indeed in their joint
3 statement helpfully produced for you, gentlemen, and the
4 Commission -- when they were asked about it, they
5 accepted that really the communication problem was
6 between the CM team of MTR and the DM team of MTR.
7 Atkins were not involved.

8 That's important because of the complexion that is
9 then placed on some of the communications we will move
10 on to look at -- you've read it all, you've heard it
11 all: there was "monolithic", "at the same time" and
12 "concurrently", and whether or not these caused
13 confusion.

14 Dealing firstly, if I may, then, with TQ33 -- as
15 I deal with in paragraph 43, it was a Leighton and
16 team B matter, not something that involved MTR. It
17 referred to the design of the OTE wall and the EWL slab
18 connection requirement.

19 As I continue at the top of page 22, it raised
20 a design query over the construction of the anchorage
21 where the width of the OTE outside the eastern limit of
22 the eastern D-wall was less than 1,200 millimetres, due
23 to the difficulty of fixing L-shaped bars to the
24 couplers on the D-wall. That is where the response was
25 made, at that point.

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1 But I think at that point, if I step across simply
2 because you've read it, the communications about
3 "monolithically" or "at the same time", one gets to
4 paragraph 47: this was a simple design query between
5 Leighton and team B. That's all it was. It dealt with
6 working space, and importantly this, as you will see at
7 paragraph 47.2: when the reply was made to TQ33, Atkins
8 was not aware of any trimming down of the D-wall. Its
9 reply was based on the original design. This was in
10 late July, when the indications are this trimming had
11 actually started.

12 So, at that point, and as I go on to say in 47.3,
13 not only is TQ33, as I put it, a simple design query, it
14 only relates to 12 panels. And of the 12 panels, two in
15 the end did not use couplers and were constructed using
16 alternative straight-bar detail, and of those that were
17 still affected, they were constructed and concreted in
18 December, November, October and November, sometime after
19 the reply to TQ33.

20 So when I use, if I may say, my test, which I convey
21 as being sensible one, what is it this communication
22 could have caused? The answer is not very much, because
23 it was a communication in relation to a design query of
24 limited nature between a small number of parties. It
25 certainly didn't conflate itself into involving the

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| <p>1 breaking down of the D-wall. And what's more, that 2 plainly was the way it was read. It was not then 3 conflated into a bigger issue which was then deployed 4 across 280 metres of D-wall.</p> <p>5 So the evidence that supports that, sir and 6 Professor, is more firmly and fully set out in the 7 remainder of paragraph 48 on pages 24 to 25, pausing 8 just at that point to the helpful evidence of Mr WC Lee, 9 who talks at paragraph 48.4 of the way in which the OTE 10 wall and the EWL slab would ensure full tension, cast at 11 the same time to ensure full tension anchorage for the 12 slab. The way it was achieved was by couplers. I think 13 that might have been in response to a question from 14 Prof Hansford. That was supported then, when it came to 15 Dr McCrae, in paragraph 48.6, again in response to 16 Commissioner Hansford, "monolithic" is a reference to 17 the structural behaviour of the finished structure, not 18 necessarily cast in one piece but cast at the same time 19 or concurrently and held together with couplers. That 20 was the concept. And that, as I have said and I return 21 to at the top of page 25, is what was set out in 22 PWD-59A3 and never changed. Never changed.</p> <p>23 TQ34 then is dealt with from paragraph 49 onwards. 24 It was even more limited. EH74 is the panel that it 25 referred to. It dealt with a simple remedial issue</p> | <p>1 the limited nature, when they were received, the parties 2 between whom they were issued, cannot reasonably be 3 regarded as a communication to a sophisticated, skilled 4 and experienced construction professional that tells him 5 that it is okay to crack on in the absence of working 6 drawings with 280 metres of breaking down of D-wall and 7 indeed to a depth in some cases of 3 metres, all against 8 the background of the postscript to change no. 1 that 9 I mentioned about 15 minutes ago, which was the stern 10 message from government in relation to such changes.</p> <p>11 There is a lot of reference to Mr Kit Chan's 12 evidence in MTR's submissions at paragraph 164, 13 et cetera, and none of what I have said is seeking to 14 paint any position other than this, that you as 15 Commissioners are, in my respectful submission, entitled 16 to view not necessarily what witnesses said after the 17 event as being justification for a decision, but what 18 objectively that communication did at the time or was 19 likely to do.</p> <p>20 That is why I reached the proposed finding that 21 I ask of you that Atkins was not a party to nor 22 contributed to any alleged miscommunication between the 23 CM team and the DM team of MTR and/or Leighton which 24 caused or contributed to any of the issues relevant to 25 this Commission.</p> |
| Page 122 | Page 124 |
| <p>1 concerning misalignment to the rebar at the slab and 2 couplers at EH74. I mentioned EH74 just a moment ago, 3 as Professor and Chairman will recall, in the context of 4 my pause for breath, when I was explaining the length of 5 the diaphragm wall affected by the change. EH74 is 6 within that. It is 2.8 metres long. I don't need to 7 repeat the word "conflation" but you have my point.</p> <p>8 So that, the breaking down, as identified in 9 paragraph 50, of the top layer of reinforcement and use 10 of straight through-bars, as I say there, has no 11 connection to the second change. No connection to the 12 second change.</p> <p>13 I go on to set out in more detail the position. The 14 small amount of trimming of the D-wall that I mention in 15 paragraph 51.3, involved in TQ34, is 200 millimetres of 16 trimming, over 2.8 metres of wall -- not, as you know, 17 and you will see from the drawing I referred you to 18 a moment or two ago, as much as 3 metres in some cases.</p> <p>19 The evidence which supports all of this, sir and 20 Professor, is set out in paragraph 52. I think I have 21 really touched upon the key points, which conclude in 22 52.4: the second change appears to have proceeded 23 without reference to TQ34.</p> <p>24 I will finish where I started in this section, if 25 I may, that looking at that content of TQ34 and TQ33,</p> | <p>1 If I may then proceed -- and I can do this very, 2 very lightly, I think, in the light of what I have 3 said -- the preparation of the as-built drawings and 4 obtaining BD approval in relation to the first change is 5 set out in paragraphs 53 to 59 and is well explained, if 6 I may say, there, and all supports the proposed finding 7 at paragraph 60.</p> <p>8 Similarly, in relation to the BD approval of the 9 second change, that position is set out in paragraphs 61 10 to 66 and is again explained as much as I think the 11 Commissioners will need for these purposes. As you will 12 recall, that work is all against the background of 13 learning only after June 2018 and dealing with matters 14 since then, particularly in September and onwards, all 15 leading to the proposed finding as set out at 16 paragraph 67 at the foot of page 29.</p> <p>17 The BD process in relation to the second change is 18 again covered in paragraphs 68 to 72. That position is 19 again borne out by the factual position which is that 20 Atkins simply were not involved in the second change, 21 but since becoming aware of it in the second half of 22 2018 they have been doing what they can to support it, 23 but they were not, as I say in the finding at 24 paragraph 73, involved in any decisions in relation to 25 it.</p> |

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| <p>1 On the seeking of approval, that is set out in 2 paragraphs 74 to 75.7, and that all leading to the 3 position set out in paragraph 76 that the second change 4 is not in itself substantial in nature, provided that 5 structural integrity is not affected and may not have 6 required a submission for consent in advance of 7 construction, although I think we are at one with 8 everyone else in saying it almost certainly will do, 9 will require to be dealt with, in the BD submissions, 10 that will be dealt with as part of the BA14 process 11 underway now.</p> <p>12 I think in view of time and in view of the broad 13 view of parties, certainly of MTR, the Commission or 14 Leighton, and certainly as supported by Atkins, the 15 permanent works design point I think has been well 16 covered. You will recall that this section, at 17 paragraphs 77 to 83, deals with the calculations which 18 were provided by Atkins in response to a question and 19 request by Prof McQuillan at the end of December, and 20 I think put broadly the experts for the Commission, for 21 Leighton, for MTR are all at one: we don't need any more 22 calculations. From Atkins' perspective, we don't think 23 any more calculations are required. But if it be the 24 Commission's desire and request, to meet the terms of 25 reference, that those be obtained, and we have covered</p> | <p>1 to 86. These points are here for completeness. I think 2 in terms of the cross-examination of Dr Glover on this 3 point, and the position that both he reached and which 4 I think the Commissioners understood from him, I do not 5 need to go any further into the depth of that than what 6 is said here. I think the comments in his report were 7 explained in his evidence, and that is why one gets to 8 the proposed finding.</p> <p>9 Professor?</p> <p>10 COMMISSIONER HANSFORD: That may be the case, Mr Connor, but 11 the point was made yesterday, I think, about whether the 12 design was over-conservative. I don't think that was 13 the word used. And I did put down a marker that 14 "Mr Connor might want to address that tomorrow" and this 15 is your opportunity.</p> <p>16 MR CONNOR: Thank you, sir. This is then the time to cover 17 it. I think you are right, it was raised during --</p> <p>18 COMMISSIONER HANSFORD: It is "conservative"; you use the 19 word "conservative" at paragraph 84.</p> <p>20 MR CONNOR: Yes.</p> <p>21 CHAIRMAN: I think it was touched upon perhaps when China 22 Technology were making submissions.</p> <p>23 COMMISSIONER HANSFORD: I forget. It was touched on.</p> <p>24 MR CONNOR: I'm trying not to be sycophantic: you are both 25 right. There is a reference to it in China Technology's</p> |
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| <p>1 this to some extent yesterday, then of course what needs 2 to be done to support that will be done.</p> <p>3 COMMISSIONER HANSFORD: Just on that point, Mr Connor -- I'm 4 sure you were listening very carefully yesterday --</p> <p>5 MR CONNOR: Yes.</p> <p>6 COMMISSIONER HANSFORD: -- when the government gave us their 7 closing submission. Have you been requested any data 8 for those calculations, and if so have you supplied it?</p> <p>9 MR CONNOR: As of yesterday, which was when I raised the 10 point, no formal request had come forward, but there was 11 clearly an ongoing process of communication between 12 Atkins and MTR just now, not least of all in relation to 13 support of a range of activities.</p> <p>14 But as of yesterday, no formal request to provide 15 all the data that had been requested had been made. But 16 what I might do, if it assists you, Professor, is to get 17 an update on that over lunch.</p> <p>18 COMMISSIONER HANSFORD: Yes, please.</p> <p>19 MR CONNOR: And when I return, I can tell you the position 20 on that. But certainly we stand, as of yesterday, ready 21 to support and meet that request as and when it comes.</p> <p>22 COMMISSIONER HANSFORD: If an update is available, that will 23 be welcome.</p> <p>24 MR CONNOR: I'm sure it will be.</p> <p>25 That takes us, I think, neatly on to paragraphs 84</p> | <p>1 submissions. Mr So will correct me if I don't have this 2 right. But I think really the purpose for which it is 3 used in those submissions is more to say that given that 4 Atkins provided the depth and nature of the 5 reinforcement that it did, then presumably it was 6 required, and therefore China Technology use it in the 7 context of saying, "If it was required, then it ought to 8 be there." That is how I read his reference to it.</p> <p>9 I think it was touched upon either by Mr Khaw or 10 Mr Chow yesterday by reference to it, but I think for 11 a limited purpose, if I recall. I think -- you are 12 quite right -- the point was raised that was 13 I suggesting -- for example, I think in 14 paragraph 85.4 -- somehow that the quotes were not 15 important, and I think it was Mr Chow perhaps who drew 16 attention to the manner in which the Code for Structural 17 Use of Concrete in Hong Kong was put together and that, 18 as he put it I think in discussion with you, sir, was to 19 say -- I'm paraphrasing here -- it's not for us to 20 gainsay what has been put together to protect the safety 21 of society in Hong Kong, very roughly.</p> <p>22 That is not the intention of 85.4. The context of 23 my comment there is against the background of a comment 24 that arose in Dr Glover's report, which suggested that 25 certain of the reinforcement, I think particularly that</p> |

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1 in the soffit at the base of the EWL slab, was more than
 2 was required and was too conservative, and therefore
 3 what is quoted in 85.4 is a quote from him in response
 4 to some questions from me that was seeking to explore
 5 that point a little bit further, and it wasn't with
 6 a view to suggesting that the codes should not be
 7 followed, but it was more to understand from Dr Glover
 8 really what his point was, and I think -- sorry, sir, if
 9 I may just finish this point while it's in my head.
 10 CHAIRMAN: Carry on, please.
 11 MR CONNOR: I think his point really is this, and it's
 12 summarised in the following subparagraphs: of course the
 13 codes are there, of course they must be observed. What
 14 I think he was asking for was that -- again, if I may
 15 paraphrase him -- it would be good if the way in which
 16 the codes are applied was done in such a way that it
 17 encouraged and facilitated the application of more
 18 engineering judgment. That's what I took from it.
 19 Sorry, sir, back to you.
 20 CHAIRMAN: The only point I was going to make is -- I think
 21 we have to be careful, when we are wrapping everything
 22 up, not to chase every rabbit down every hole, and as it
 23 turns out, a criticism that the design was too
 24 conservative is absolutely on the right side, if it's
 25 an error. It may be different if the design was not

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1 conservative enough, that may have added to safety
 2 issues, but I've always understood what those statements
 3 were intended by -- other than perhaps Dr Glover wishing
 4 to give his philosophy, which he is quite entitled to do
 5 with his experience and the like, as I understand it
 6 really what was being said there, it was an antidote to
 7 the question of safety, of there being insufficient
 8 safety, by saying, "Look, in fact, if anything, this was
 9 too conservative; there was too much redundancy."
 10 COMMISSIONER HANSFORD: It's a positive point, not
 11 a negative point.
 12 CHAIRMAN: Yes.
 13 MR CONNOR: And ultimately that's I think where we got to in
 14 this regard, and I think he helped us with the
 15 background of his thinking and I guess his aspiration
 16 for the future.
 17 CHAIRMAN: Yes.
 18 MR CONNOR: That I think all then took us to the conclusion
 19 that I commend at paragraph 87, which is that the design
 20 of the permanent works was carried out in an appropriate
 21 manner, in accordance with the relevant standards and
 22 the approval process in Hong Kong.
 23 CHAIRMAN: Yes, in the circumstances of this, and this is
 24 not a design competition, you see.
 25 MR CONNOR: It's not, no. Thank you very much, sir.

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1 We then conclude in some comments on safety and
 2 integrity of the design. They appear in 88 to 92. I do
 3 not need to paraphrase what has already been said well
 4 by others and which I think the Commission will come
 5 back to this afternoon. Dr Glover, Mr Southward,
 6 Prof McQuillan all accord with the view, and certainly
 7 Atkins supports it, as I say at paragraph 93: the
 8 structure is safe.
 9 COMMISSIONER HANSFORD: I wouldn't want you to have to
 10 qualify point 93, because it's very succinct, but I'm
 11 just wondering, are you saying the structure as designed
 12 is safe or are you just saying the structure as designed
 13 and as constructed is safe?
 14 MR CONNOR: From an Atkins perspective, it can only be the
 15 design because we have no involvement --
 16 COMMISSIONER HANSFORD: That's what I was trying to
 17 understand.
 18 MR CONNOR: Thank you.
 19 I can I think definitely step over knowledge of
 20 rebar.
 21 CHAIRMAN: I don't think --
 22 MR CONNOR: There is none -- at least on the part of Atkins.
 23 Finally, as to observations for future projects,
 24 those are set out in paragraph 97. I'm very happy to
 25 expand upon these but in short measure, in 97.1, the

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1 question of more meaningful site presence for design
 2 consultants was raised I think by yourself, Professor,
 3 with Mr Blackwood when he gave evidence, and
 4 Mr Blackwood readily said, yes, it would be a good
 5 thing. Therefore, although I don't believe -- I could
 6 be wrong -- I don't believe this is a point that is
 7 raised as a suggested action for the future in other
 8 submissions, it is one which Atkins would support.
 9 COMMISSIONER HANSFORD: It may well not be mentioned as
 10 an action for the future in other submissions, but it
 11 might be one that the Commission decides to include.
 12 MR CONNOR: I understand.
 13 COMMISSIONER HANSFORD: But the point here is slightly
 14 different, I think, because in 97.1 you submit that
 15 "communications among all relevant stakeholders may be
 16 enhanced by making provision in the appointment(s) of
 17 the consultant for an allowance of a meaningful site
 18 presence".
 19 While I'm sure that's true, is it not also the case
 20 that ensuring the design intent is implemented in the
 21 works would be facilitated by ensuring -- by having the
 22 designer having presence on site?
 23 MR CONNOR: I think from Atkins' perspective, we would be
 24 comfortable with that expansion of the point.
 25 COMMISSIONER HANSFORD: Thank you.

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1 MR CONNOR: Thank you, sir.
 2 Then, on 97.2, we touch upon conflict of interest
 3 policy and the establishment of a conflict of interest
 4 committee. You will recall, I think, this came out from
 5 the project management experts and there was some very
 6 good and helpful evidence from them of what is being
 7 deployed on other major infrastructure projects,
 8 particularly in the UK. While one hesitates before
 9 trying to design what that might look like, but clearly
 10 it's a point to ensure that one is learning such lessons
 11 as there are to be learned from this Commission, and
 12 what we have heard is a sensible consideration for the
 13 future, and one that is picked up, certainly in the
 14 submissions for the government, at paragraph 171 and
 15 I think also in the Commission's submissions.
 16 With that, sir and Professor, I get to the end of my
 17 closing submissions. Paragraphs 98 to 113 seek to
 18 summarise the findings which I have respectfully
 19 proposed to you throughout this written document and
 20 this oral submission. I do not need to add to those
 21 further in closing. Atkins, to my knowledge and
 22 hopefully also to yours, has assisted the Commission
 23 throughout since its involvement in the Commission of
 24 Inquiry since the middle of October and has been pleased
 25 to support it. It remains ready to do so in any further

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1 questions you have for me or in any further follow-up
 2 actions from today, and I will certainly come back to
 3 you on that point when we resume after lunch, but at
 4 that point even my stomach is complaining that it is
 5 time to finish.
 6 Thank you.
 7 CHAIRMAN: Thank you very much.
 8 MR CONNOR: Thank you, sir. Thank you, Professor.
 9 CHAIRMAN: Good.
 10 MR PENNICOTT: 2.30?
 11 CHAIRMAN: Yes. We are almost absolutely on 1.30. Thank
 12 you. So we will resume at 2.30. Thank you.
 13 (1.30 pm)
 14 (The luncheon adjournment)
 15 (2.34 pm)
 16 MR CONNOR: Sir, Professor, I am back with you as promised
 17 by way of a very short update on the question of the
 18 calculations in support.
 19 CHAIRMAN: Yes.
 20 MR CONNOR: Enquiries have been made. As yet, there is no
 21 instruction or request with Atkins to produce the
 22 material that may be enquired. But Mr Blackwood is on
 23 the case and we can contact to see if that can be
 24 forthcoming. I have mentioned it to Mr Boulding.
 25 CHAIRMAN: Thank you.

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1 MR CONNOR: I should say, we were doing our very best to be
 2 able to update yourself, Professor, and the Chairman,
 3 this afternoon before we arrived.
 4 CHAIRMAN: Thank you very much.
 5 Mr Coleman?
 6 Closing submissions by MR COLEMAN
 7 MR COLEMAN: May it please you, Chairman and Professor.
 8 The first point I want to make arises for those
 9 people who are confused by the changed in the seating
 10 arrangements in this court. Though I am standing here,
 11 I am not Paul Shieh. For those of you who don't believe
 12 that, there are perhaps three ways to tell the
 13 difference between us. The first is that it is not my
 14 face that's causing the traffic hazard outside the
 15 court. The second is that Mr Shieh has long, wavy hair
 16 and arms to match, and I don't. The third is that when
 17 he made his submissions, Mr Shieh stood here 6 foot
 18 2 inches tall and spoke for an hour and a quarter, and
 19 in both respects I intend to be much shorter.
 20 In order to assist the brevity of my submissions,
 21 I promise not to read vast tracts of my written material
 22 out loud. I also promise for comfort not to shout, not
 23 to use the words "ludicrous" or "ridiculous", and I will
 24 not extend the same invitation to you that was extended
 25 by Mr Connor for feeling free to interrupt me whenever

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1 you like.
 2 COMMISSIONER HANSFORD: But nevertheless we may.
 3 MR COLEMAN: You do as you think fit, sir.
 4 I have to confess it's not unusual for me when
 5 I walk into a court to be asked why I'm there. Usually
 6 the subtext is "why would anyone instruct you?" But on
 7 this occasion I have been asked that on a number of
 8 occasions and the subtext is slightly different.
 9 Avoiding a trite or a light response, it may help to
 10 recall why I am here, why Pypun is here. Originally, by
 11 a letter of 2 October last year, the Commission required
 12 Pypun to produce witnesses to speak to four specific
 13 requests set out in the letter, as well as -- and
 14 I think uniquely for the Salmon letters in this case --
 15 to offer any suggestions or recommendations for
 16 improvement of public assurance.
 17 Just a week before the hearing was scheduled to
 18 begin on 22 October, by letter of 15 October last year,
 19 it was a Salmon letter, Pypun was identified as a party
 20 that might be the subject of, therefore, potential
 21 criticism, so precipitating its participation as
 22 an interested or involved party.
 23 As it turns out, no one has really directed
 24 criticism against Pypun, subject perhaps to one or two
 25 small points to which I can return shortly. Indeed, as

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| <p style="text-align: right;">Page 137</p> <p>1 this became clear, it was possible, with the kind 2 assistance of the Commission and its legal and 3 administrative team, to schedule a fixed time for the 4 Pypun witnesses to give evidence. 5 They had provided, on 13 November, their two witness 6 statements, addressing the four questions in the 7 Commission's letter of 2 October. Mr Mak and Mr Yueng 8 were the two witness and they gave viva voce evidence to 9 the Commission on 13 and 14 December last year 10 respectively, as pre-arranged. 11 13 December was Day 34 of the Inquiry. Yesterday, 12 Mr Cohen seemed to take great pleasure in the fact that 13 he had not really said anything since Day 3 of the 14 Inquiry. I think I can trump him by saying I didn't 15 really say anything until Day 34, and I haven't said 16 anything since Day 35. 17 Both witnesses were questioned by various parties, 18 including counsel for the Commission, and it is fair to 19 describe the questioning as mainly exploratory or 20 seeking clarification. It is hoped and it is believed 21 that both witnesses were of assistance to the 22 Commission, firstly in providing an understanding as to 23 Pypun's role in the project and also in the provision of 24 what we hope are helpful and forward-looking 25 recommendations.</p> | <p style="text-align: right;">Page 139</p> <p>1 There is no need for me to repeat at any length that 2 the project adopted a project management approach known 3 as the concession approach, that there was entrustment 4 to MTR by the government, or that the MTR's existing 5 project management and control process were to used 6 because, as others have emphasised in their submissions, 7 its own project management system, the PIMS system, is 8 certified ISO 9001 compliant; it's been used to manage 9 railway projects for many years and it is subject to 10 constant consideration, internal and external audit, 11 a point referenced in the joint statement of the project 12 management experts, ER1, tab 9, pages 1 to 2. Reference 13 of course can also be made to the points made by the 14 government in its submissions at paragraphs 41 and 42. 15 The project adopted the recommended "check the 16 checker" approach which is a risk-based sampling 17 approach, taking into account that the government's 18 resources are to be utilised effectively and to avoid 19 repetition and micromanagement of the project. 20 Pypun's role as the M&V consultant had a focus on 21 cost, programme and public safety. Of course that focus 22 was not the same for the BSRC activity. 23 My footnote on page 7, footnote 5 on page 7 of my 24 submissions, might have been writ larger, perhaps not in 25 a footnote, in 14-point font, but it is worth making,</p> |
| <p style="text-align: right;">Page 138</p> <p>1 Mr Chairman, in the light of your many analogies, 2 I have sought to bring into these submissions a military 3 analogy. I am assisted of course because I too, like 4 you, am a former soldier, and you may recall, Chairman, 5 that in the army there is a system of providing ongoing 6 reporting on the qualities of, certainly in my case, 7 officers, called confidential reports. I remember one 8 particularly from my time serving -- I won't identify 9 the officer in question so as to maintain the 10 confidentiality -- but the report went along these 11 lines: "Lieutenant Coleman is a young officer who sets 12 himself low standards and usually fails to achieve 13 them." 14 But the analogy is drawn because under the 15 contractual arrangement for Pypun in this case, there 16 was a system of contemporaneous appraisal, and the lack 17 of criticism that has been shown of Pypun in this 18 Inquiry is that it is consistent with the satisfactory 19 contemporaneous appraisals that were provided by the 20 Highways Department. They were provided of course in 21 the context of the M&V agreement under which Pypun was 22 appointed as a consultant on the project, and as I'm 23 sure you, Chairman, and you, Professor, will recall, on 24 a large number, across a large number of contracts, not 25 just contract 1112.</p> | <p style="text-align: right;">Page 140</p> <p>1 that in this context, "public safety" concerned the risk 2 of accidents involving neighbouring residents, aspects 3 of safety to the public during the construction works 4 and the testing and commissioning phase, but not 5 relating to the quality or integrity of the permanent 6 works that have been constructed. 7 Indeed, in that context, one might refer to 8 footnote 7 on page 12 of the government's submissions. 9 You don't need to turn it up but there reference was 10 made to paragraph 123 of Mr Rowsell's report, where the 11 observation was made that delivering a quality product 12 on a "right first-time basis" is "inextricably linked" 13 to successful delivery of cost and programme objectives. 14 Linking overall quality to cost and programme and 15 indeed vice versa is probably no more than the statement 16 of a truism: one can impact the other. But the key 17 point for current purposes, looking backwards, is, as 18 Mr Rowsell stated in his oral evidence, transcript 19 Day 39 at page 113, lines 1 to 5 -- he said this: 20 "The government's monitoring requirements could, 21 I believe, be better supported by enhancing the role of 22 the monitoring and verification consultant. On this 23 contract that role was performed by Pypun, but the role 24 excluded assurance on quality procedures." 25 The key point looking forward of course is to be</p> |

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| <p>1 found in the various recommendations made. Perhaps</p> <p>2 I will touch on them a bit later.</p> <p>3 While we are dealing with footnotes, it may be</p> <p>4 useful to draw attention also to footnote 8 on page 13</p> <p>5 of the government's submissions, which correctly</p> <p>6 clarifies, as I read it, a distinction to be drawn</p> <p>7 between the audits on the M&V side and on the BSRC side</p> <p>8 performed by Pypun. On the former, the M&V audits,</p> <p>9 regular audits were carried out in accordance with the</p> <p>10 verification plan submitted by Pypun, without need for</p> <p>11 further instructions from the government. On the</p> <p>12 latter, that's the BSRC, audits would be undertaken at</p> <p>13 the instruction, on an ad hoc basis, at the instruction</p> <p>14 of the government. Page 13 of the government's</p> <p>15 submissions.</p> <p>16 COMMISSIONER HANSFORD: Thank you.</p> <p>17 MR COLEMAN: Footnote 8, at the very bottom of the page.</p> <p>18 COMMISSIONER HANSFORD: I have it.</p> <p>19 MR COLEMAN: As to the improved use of the information</p> <p>20 obtained through those audit processes, that's what</p> <p>21 I think gives rise to Mr Rowsell's suggestion of the</p> <p>22 project sponsorship team, as he termed it, and for</p> <p>23 reference see his evidence, transcript Day 39, page 138,</p> <p>24 line 12, to page 139, line 20.</p> <p>25 Note also, as we have drawn attention to in our</p> | <p>1 Pypun "to be proactive, working closely with the</p> <p>2 director's representative and the MTRCL and timely</p> <p>3 adjust its work plan to suit the progress and programme</p> <p>4 of the SCL works", examples were given as to how Pypun</p> <p>5 was proactive in working with the director's</p> <p>6 representative and the MTR.</p> <p>7 As to the BSRC side of the arrangement, I don't need</p> <p>8 to deal with how the BD conducted its role for the</p> <p>9 approval of designs on this project. The basis of doing</p> <p>10 that has been canvassed by others.</p> <p>11 The function of Pypun's BSRC team was to provide</p> <p>12 assistance to the BO team, and again a flow chart</p> <p>13 setting out the agreed procedure for vetting planned</p> <p>14 submissions, which was adopted by Pypun, has been</p> <p>15 referenced in our written material.</p> <p>16 Also set out in Mr Yueng's witness statement at</p> <p>17 paragraphs 27 and 29 are the types of matters that would</p> <p>18 be generally observed during site monitoring, site</p> <p>19 auditing and site inspection respectively.</p> <p>20 As to the monitoring plan, one paragraph of it,</p> <p>21 4.4.2, provided that Pypun would visit the project site</p> <p>22 at least once per quarter, and stipulated also that</p> <p>23 Pypun would prepare two-week advance schedules for</p> <p>24 planned site visits and suggested the establishment of</p> <p>25 direct communication between the site monitoring team</p> |
| Page 142 | Page 144 |
| <p>1 written material, the supplementary engagement of Pypun</p> <p>2 in June of last year to carry out a check of the</p> <p>3 inspection and supervision records in relation to the</p> <p>4 construction of the EWL slab and the finalised report</p> <p>5 dated 11 December 2018. I give you the page reference:</p> <p>6 G18/13414. No need to turn it up.</p> <p>7 Of course, those additional visits are to be seen in</p> <p>8 the context -- including the additional visits which are</p> <p>9 referenced by the government, in paragraphs 173(4) and</p> <p>10 175(9), seen in that context.</p> <p>11 As to monitoring and verification generally,</p> <p>12 a monitoring plan was developed and accepted by</p> <p>13 government, a monitoring team was put in place. And the</p> <p>14 general practice is identified by the flow chart that we</p> <p>15 have given you the page reference for.</p> <p>16 A typical monthly report delivered by Pypun, we've</p> <p>17 given you a reference, would contain a risk register,</p> <p>18 with a breakdown of risk impact categories and a rating</p> <p>19 for the probability of occurrence or the severity</p> <p>20 respectively.</p> <p>21 The risks identified by Pypun are of course assessed</p> <p>22 from the RDO's perspective, which may be slightly</p> <p>23 different from those of MTR.</p> <p>24 As to proactivity, by reference to clause 6.1.7 of</p> <p>25 the M&V agreement -- that's at G9/7658 -- requiring</p> | <p>1 and MTRC's site team, to maintain effectiveness.</p> <p>2 Indeed we know from the evidence that the route of</p> <p>3 the site walks would be proposed by MTRC, MTRC would</p> <p>4 give a briefing to RDO and Pypun, and if MTRC told the</p> <p>5 government or Pypun that there was anything in</p> <p>6 particular to which attention should be paid, then the</p> <p>7 site walk could be routed to call on those locations.</p> <p>8 Nowhere is it shown in any of the reports that the</p> <p>9 change of the diaphragm wall design was notified by MTR.</p> <p>10 There is no suggestion that MTR asked Pypun to observe</p> <p>11 or pay attention to the top of the D-wall. None of</p> <p>12 MTR's own witnesses, nor indeed any other witnesses,</p> <p>13 ever said or suggested that the works relating to the</p> <p>14 changed design were observed or must have been observed</p> <p>15 during site walks, and as we say in our footnote 4 on</p> <p>16 page 4, during the construction period Pypun had no</p> <p>17 knowledge of the change in connection detail between the</p> <p>18 EWL slab and the east diaphragm wall.</p> <p>19 In paragraphs 44 to 48 of our written submissions,</p> <p>20 we dealt with the area of cross-examination conducted by</p> <p>21 Mr Boulding on behalf of the MTR. The point is pursued</p> <p>22 by him in his paragraph 169(iii) on page 85 of the MTR's</p> <p>23 submissions. In addition to the answers we have already</p> <p>24 given to that point, paragraphs 44 to 48 of our written</p> <p>25 material, of course reference can be made to</p> |

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1 paragraphs 129 to 133 on pages 71 to 73 of the
 2 government's submissions, and to paragraph 305 of the
 3 Commission's counsel's submissions.
 4 I might say that in any event Mr Boulding doesn't
 5 need the point that he makes in that subparagraph (iii)
 6 for his overall submission that MTR were doing the work
 7 openly without intention to mislead or schedule. I will
 8 leave it to others to suggest that that miss the point
 9 about whether or not proper approval was sought or
 10 obtained.
 11 Pypun has also attempted to put forward, in answer
 12 to the request to do so, several forward-looking
 13 recommendations. We have rehearsed them in our written
 14 material between paragraphs 52 and 56 and I shan't
 15 repeat them. But as stated in our paragraph 57, we
 16 consider those recommendations are consistent with and
 17 complementary to the recommendations proposed by the two
 18 Steves, Messrs Rowsell and Huyghe, the Commission and
 19 the MTR's experts on project management respectively.
 20 So we hope that Pypun has been of assistance to the
 21 Commission, by providing witness statements, documents
 22 and by giving oral evidence, as well as by making those
 23 recommendations.
 24 In paragraph 58 of our written submissions, we
 25 stated for Pypun that though there may be proper

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1 suggestions as to how there might be improvements in
 2 future projects achieved in part through contractual
 3 changes, there is nothing in respect of Pypun's
 4 performance of the M&V agreement which would justify the
 5 raising of criticism against Pypun.
 6 In paragraph 309 of counsel for the Commission's
 7 submissions, Mr Pennicott and his team specifically
 8 endorse that view. Mr Pennicott, who is an advocate
 9 I admire so much that I've even copied his hairstyle,
 10 was kind enough -- I see the professor looking jealous;
 11 grass does not grow on a busy street, does it, sir? --
 12 I see he, Mr Pennicott, was kind enough to describe my
 13 submissions as clear and helpful. I thank him and can
 14 I say that his are pretty good too.
 15 With that, I'll sit down and listen to the oral
 16 explication.
 17 CHAIRMAN: Yes. Thank you. Any questions?
 18 Thank you very much, Mr Coleman.
 19 H O U S E K E E P I N G
 20 MR PENNICOTT: Sir, can I just have a word with Mr Cheuk?
 21 CHAIRMAN: Of course.
 22 MR PENNICOTT: Because I've been given some information
 23 I just need to ...
 24 MR SHIEH: While Mr Pennicott is having a word with
 25 Mr Cheuk, there is one point that has just come to my

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1 attention and I wish to raise it openly.
 2 CHAIRMAN: Yes.
 3 MR SHIEH: That is on reviewing the daily opening-up records
 4 and from what I understand to be the case, the police
 5 have been taking samples of rebars on site for the
 6 purpose of actually measuring the length of the rebars
 7 inside the couplers, and for evidential reference I just
 8 give a handful of examples.
 9 In the opening-up bundle, at page, for example, 547,
 10 you can see, for example, the first yellow highlighted
 11 item:
 12 "Concrete hacking off for rebar cutting for police
 13 sample in progress."
 14 So it shows that a process has been going on for the
 15 police to take samples.
 16 Then jumping straight to page 549, item 19, you can
 17 see:
 18 "1st layer open-up work completed; coupler/threaded
 19 bar sample ... was cut from slab and seized by police."
 20 If you go on, for example, in the latest updates,
 21 page 567, item number 13, again you can see:
 22 "... hacking off for rebar cutting for police
 23 sample ... continued."
 24 And it goes on. There's a process of hacking and
 25 the police take samples and there's a reference to the

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1 police having taken samples.
 2 I just wish to raise the question for the relevant
 3 stakeholders, MTRC and the government, who may be
 4 involved in this process, as to the nature of any
 5 examination or measurement that might have gone on,
 6 having taken these samples, because these seem to be
 7 a separate exercise from the ultrasonic PAUT process
 8 that we've been hearing about every day. If there are
 9 actual measurement results then obviously this is
 10 something we should know and obviously the Commission
 11 would be interested to know.
 12 CHAIRMAN: Yes.
 13 MR SHIEH: Can I just raise it here and expect a response
 14 from those who know.
 15 COMMISSIONER HANSFORD: Do we know who "those who know" are?
 16 That's a very clumsy way of putting it. Who are we
 17 expected to hear that from?
 18 MR SHIEH: Either the MTR or the government, to be blunt
 19 about it.
 20 MR BOULDING: Sir, I'd heard this process was ongoing. It
 21 is ongoing at the moment. I shall obviously take
 22 instructions because I can see it could be a matter of
 23 great interest to the Commission, particularly in
 24 circumstances where you'll recall that Prof McQuillan
 25 cast some doubts upon the accuracy of the PAUT process.

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1 But I'll check.
 2 MR KHAW: We also need to take instructions, in view of what
 3 Mr Shieh has said.
 4 MR SHIEH: But obviously while we are all here it may be of
 5 some utility for that process to be speeded up, because
 6 if there is any information or results to be shared then
 7 the earlier everyone knows, the better.
 8 CHAIRMAN: Sorry, what exactly are the police doing? Can
 9 somebody explain to me in layman's language?
 10 MR PENNICOTT: Sir, I can only explain -- I can certainly do
 11 it in layman's language. My understanding, and it is
 12 only an understanding, from instructions I have
 13 received, is that the police -- and as Mr Shieh has just
 14 indicated, on I imagine some sort of random basis, I'm
 15 not quite sure how they are deciding which ones to take
 16 away, but they are literally going in, the bars being
 17 cut, and they are unscrewing a number of the threaded
 18 rebars.
 19 CHAIRMAN: All right. So the concrete is opened up in any
 20 event.
 21 MR PENNICOTT: Yes.
 22 CHAIRMAN: And the police then are cutting the reinforced
 23 bar to enable them to then unscrew that bit of the bar
 24 that is attached to the coupler. And then?
 25 MR PENNICOTT: Sir, what then I'm not sure, but of course

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1 one obvious thing that they will be able to do, or
 2 anybody will be able to do, is then measure the exact
 3 length of the thread.
 4 CHAIRMAN: Oh, right, and see if it's been cut or --
 5 MR PENNICOTT: Yes, and the link has been made by
 6 Mr Boulding's observation that Prof McQuillan -- a point
 7 I was going to make a little while later -- has just put
 8 down a marker about the accuracy of the PAUT results,
 9 and no more than that, but presumably, if one's able to
 10 physically measure, albeit on a sample basis, the exact
 11 lengths of the threads of the rebar that have been
 12 unscrewed, then one presumably will be able to deduce
 13 just how accurate the PAUT results are.
 14 COMMISSIONER HANSFORD: But it's not clear to me that we
 15 will be getting a report from the police.
 16 MR PENNICOTT: No, sir, quite. I'm somewhat in the dark as
 17 to -- at the moment, at least, I probably need to speak
 18 to those who know better than I do about these things,
 19 but how one goes about obtaining the information,
 20 I confess at the moment the appropriate channel for that
 21 is a little bit lost on me. Whether it is the
 22 government or whether it's the MTR -- it's their site,
 23 I suppose, at the end of the day, at the moment -- I'm
 24 really not sure. But certainly I endorse the request
 25 that has been made on behalf of the Commission for any

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1 information to be disclosed, if it can be, through
 2 whatever channels it takes.
 3 I see both Mr Khaw and Mr Boulding have indicated
 4 they will take instructions and I look forward, as it
 5 were, to getting some feedback on those instructions.
 6 CHAIRMAN: Good. Thank you.
 7 Mr Shieh, thank you very much indeed. It's assisted
 8 us. Thank you.
 9 COMMISSIONER HANSFORD: Mr Boulding?
 10 MR BOULDING: Sir, if I can just add to that. Obviously
 11 this morning Mr Pennicott has pointed out that the
 12 Commission of Inquiry does have a power to direct
 13 persons to produce things, and it occurs to me that in
 14 circumstances where this session is going to end at
 15 about 5 o'clock this evening, you might want to consider
 16 doing that over your tea break, perhaps in consultation
 17 with Mr Pennicott, because time is running out and it's
 18 obviously very important, and I wouldn't want the
 19 opportunity to be lost, if it's going to be of
 20 assistance to you.
 21 COMMISSIONER HANSFORD: I was thinking the same,
 22 Mr Boulding. So yes, thank you, that's helpful.
 23 CHAIRMAN: I have pause -- like a good lawyer, always
 24 assuming a difficulty -- simply that evidence that has
 25 been obtained for possible criminal purposes, whether

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1 the police would be reticent in letting us have details
 2 or the evidence itself. But as I say, that's a matter
 3 I will consider.
 4 MR PENNICOTT: Yes. And, sir, the context in which I was
 5 looking at the Ordinance this morning and what powers
 6 the Commission may have was in the context of directing
 7 further tests to be done.
 8 CHAIRMAN: Yes, of course.
 9 MR PENNICOTT: That's the context. I think I would need
 10 advance notice of to what extent the Commission can
 11 order information which appears to be in the hands of
 12 the police to be handed over. That's possibly
 13 a slightly different question. But obviously one can
 14 look at that as a possibility.
 15 CHAIRMAN: Thank you very much.
 16 MR SHIEH: The police is part of the government and the DoJ
 17 is here and even though, unlike the MTR whose
 18 instructing solicitors are physically in court giving
 19 instructions, I'm sure by telecommunication devices
 20 those of the DoJ hearing nearby will be able to tell
 21 what they should be doing to assist this Commission.
 22 CHAIRMAN: Yes, thank you. That's a very good point.
 23 MR PENNICOTT: Thank you.
 24 CHAIRMAN: Mr Pennicott?
 25 MR PENNICOTT: Yes, sir. Sir, earlier today, Mr Connor --

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|---|--|
| <p style="text-align: right;">Page 153</p> <p>1 MR SHIEH: In fact --</p> <p>2 MR CONNOR: It's an ongoing situation.</p> <p>3 MR SHIEH: Because if it actually takes place on site at the</p> <p>4 MTR, a straightforward question could very well be that</p> <p>5 MTR can be asked now to tell us exactly what has</p> <p>6 happened on site, whether the police have just taken</p> <p>7 samples or the police measured on site or ...</p> <p>8 COMMISSIONER HANSFORD: We are just guessing.</p> <p>9 MR PENNICOTT: I suspect Mr Boulding will need to take</p> <p>10 instructions.</p> <p>11 MR BOULDING: I'm not inviting some draconian sanction to be</p> <p>12 imposed upon my clients, but I can see the force ...</p> <p>13 You can see my instructing solicitor there. He has</p> <p>14 just asked whether we could have four or five minutes.</p> <p>15 MR PENNICOTT: Sir, I think that would be appropriate.</p> <p>16 CHAIRMAN: All right. Would you like four or five minutes</p> <p>17 while Mr Pennicott proceeds or would you like us to</p> <p>18 adjourn for four or five minutes?</p> <p>19 MR BOULDING: If it's a choice of between seeing my</p> <p>20 instructing solicitor or listening to Mr Pennicott,</p> <p>21 I think I would prefer to listen to my instructing</p> <p>22 solicitor.</p> <p>23 (Mr Boulding left the room)</p> <p>24 You are out of hearing now, Mr Pennicott.</p> <p>25 MR PENNICOTT: So I can say anything I like about him!</p> | <p style="text-align: right;">Page 155</p> <p>1 Commission of Inquiry.</p> <p>2 It is, I have to say, by pure coincidence -- that</p> <p>3 was the first point I was going to make, about the</p> <p>4 unusual nature -- and by incredible coincidence, we have</p> <p>5 now seen the sharp focus of that point raised by</p> <p>6 Mr Shieh no more than a few minutes before I stood up to</p> <p>7 say something. We will have to see whether we can</p> <p>8 obtain the results of the investigation or that part of</p> <p>9 the investigation that the police are carrying out.</p> <p>10 Sir, the second unusual feature is that having set</p> <p>11 up this Commission of Inquiry on 10 July last year, the</p> <p>12 government also set up, as we know, an expert advisory</p> <p>13 team with terms of reference not wholly dissimilar to</p> <p>14 the Commission of Inquiry. Those terms of reference, if</p> <p>15 anybody is interested, are at G3/1850.</p> <p>16 Of course the EAT is not independent of government,</p> <p>17 comprising as it does of three senior retired government</p> <p>18 engineers. I assume but I don't know that the EAT work</p> <p>19 continues and I don't know when it will be concluded,</p> <p>20 but that's the second matter that has been going on</p> <p>21 simultaneously with the Commission.</p> <p>22 Thirdly, it is self-evident from the bundles, H21 to</p> <p>23 H27, that is the files that contain and pertain to the</p> <p>24 Development Bureau and Buildings Department, that the</p> <p>25 Buildings Department has been carrying out its own</p> |
| <p style="text-align: right;">Page 154</p> <p>1 Closing submissions by MR PENNICOTT</p> <p>2 Sir, earlier today Mr Connor said perhaps the worst</p> <p>3 time to be making a speech of this nature was before</p> <p>4 lunch or after lunch. I would add to that that an even</p> <p>5 worse position to be in is having heard from eight</p> <p>6 parties already, I am last to go.</p> <p>7 Sir, my position is exacerbated by the fact -- it's</p> <p>8 probably something to do with my age -- that around</p> <p>9 about this time in the afternoon, I rather like to pick</p> <p>10 a comfy chair, put my feet up and have a snooze, but</p> <p>11 I won't be able to do that this afternoon. I have told</p> <p>12 Mr Cheuk that should I fall asleep during the course of</p> <p>13 these submissions, he is to take over.</p> <p>14 Sir, this Commission has a number of unusual</p> <p>15 features. The first is this. As we have just heard,</p> <p>16 the Hong Kong Police is carrying out an ongoing</p> <p>17 investigation, and as a result of that investigation and</p> <p>18 by reason of the involved parties' ongoing discovery</p> <p>19 obligations before the Commission, we have from time to</p> <p>20 time received numerous police witness statements from</p> <p>21 individuals who have given evidence to the Commission</p> <p>22 and many individuals who have not given evidence to the</p> <p>23 Commission. That's been an ongoing process, and that's</p> <p>24 the first unusual feature, that there are police</p> <p>25 investigations going on simultaneously with this</p> | <p style="text-align: right;">Page 156</p> <p>1 investigations as the COI has proceeded. Again we know</p> <p>2 that because further witness statements have been</p> <p>3 obtained from individuals, some called/not called before</p> <p>4 the Inquiry, and provided to the Buildings Department.</p> <p>5 It's quite clear also from those files that</p> <p>6 correspondence between the Buildings Department and many</p> <p>7 of the parties before the Commission, including China</p> <p>8 Technology, Fang Sheung, Intrafor and Leighton, have</p> <p>9 been engaging, as I say, with the Buildings Department</p> <p>10 as this Inquiry has continued. And certain parties at</p> <p>11 certain times, perhaps understandably, have asked the</p> <p>12 Buildings Department, to put it rather colloquially, to</p> <p>13 back off until this COI has concluded. So that's the</p> <p>14 third thing that has been going on.</p> <p>15 (Mr Boulding entered the room)</p> <p>16 Sir, the fourth thing, the fourth matter that has</p> <p>17 been going on as alluded to by my learned friend</p> <p>18 Mr Shieh yesterday is the media: newspapers, both in</p> <p>19 hard copy and online, radio and TV. The media has shown</p> <p>20 a huge amount of interest in the subject matter of this</p> <p>21 Inquiry, probably more than any previous public inquiry</p> <p>22 in Hong Kong.</p> <p>23 Sir, I and you, I'm sure, as a former journalist,</p> <p>24 will be the first to acknowledge the benefit of a free</p> <p>25 press, and indeed, to use the words of Mr Shieh</p> |

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1 yesterday, a robust and fearless media. It is only
 2 right and proper to acknowledge that the press plays
 3 an important role in holding government, individual
 4 representatives of government, large corporations like
 5 the MTRC, large international organisations like
 6 Leighton, and perhaps less large, perhaps smaller
 7 entities, to account.

8 The press achieve that goal of bringing entities to
 9 account by accurate and sustained reporting, and there
 10 is no doubt that during the course of this Inquiry, from
 11 what I've read in the English language newspapers and
 12 from what I have been told and had translated from the
 13 Chinese language outlets, that the vast majority of
 14 reporting and the articles that have appeared in the
 15 press have been fair and accurate.

16 Unfortunately, however, there have been times,
 17 certain times, prior to and during the course of the
 18 Commission of Inquiry hearing where certain individuals,
 19 some directly concerned with the Commission of Inquiry
 20 as witnesses or expert witnesses, and other individuals
 21 not directly involved with the Commission -- for
 22 example, certain politicians -- have given press
 23 releases and interviews to the media which have been far
 24 from accurate and often, I am bound to say, somewhat
 25 misleading, unnecessarily alarmist, and sometimes, and

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1 I say this with a degree of hesitation, frankly
 2 irresponsible.

3 However, as you have said, sir, on a number of
 4 occasions and indeed I have said on a number of
 5 occasions, the Commission will not be influenced, let
 6 alone undermined, by these unfortunate utterances.

7 Sir, I agree with Mr Shieh -- this is a matter for
 8 you precisely how you deal with it -- but you may feel
 9 that something ought to be said about this in the
 10 report.

11 Sir, the next in fact unusual feature of the Inquiry
 12 is a matter that again I've mentioned and certainly
 13 Mr Shieh has mentioned before, and indeed we deal with
 14 it in paragraphs 7 and 8 of our written closing. It's
 15 that unlike many public inquiries or most public
 16 inquiries which are set up to investigate the cause of
 17 an event which has demonstrably and unquestionably
 18 happened, that is not the case here.

19 To give some of the examples I think Mr Shieh may
 20 have mentioned before, the Lamma ferry disaster, two
 21 ships collide in the harbour, it's an event, it's
 22 happened. One looks at the causes: why did it happen,
 23 what went wrong, what can be done to make sure it
 24 doesn't happen again? Excessive quantities of lead into
 25 water, that was a known fact. What then had to be

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1 investigated is why did it happen, what was the cause of
 2 it, and what could be done to prevent it happening
 3 again? Those are just two examples in Hong Kong. There
 4 are many examples all over the world.

5 But unfortunately this Inquiry was set up on the
 6 basis merely, on one view, of at the time wholly
 7 unproven allegations which had been made in certain
 8 sections of the media.

9 Sir, as matters have transpired, and whilst the
 10 course of this Inquiry has trodden paths which perhaps
 11 weren't entirely predictable at its outset, the basic
 12 allegations that were made at the outset have proven to
 13 be generally unsubstantiated and false, generally. Sir,
 14 such evidence as exists on the topic of threaded rebar
 15 having been cut is set out in section V of our closing
 16 submissions and of course in many of the submissions of
 17 my learned friends.

18 Sir, it is right when I say we've gone down to paths
 19 that perhaps weren't so predictable to say this, that
 20 almost by default but by virtue of the dynamic process
 21 that you have referred to a number of times, emphasis
 22 has significantly shifted away from the allegations of
 23 cut rebar to focus more on the question or questions
 24 firstly concerning the changes and particularly the
 25 second change to the top of the east diaphragm wall and

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1 the implications of that and more recently to questions
 2 that focus on whether or not the rebar has been properly
 3 or sufficiently screwed into the couplers at the
 4 connections between the diaphragm walls and the EWL and
 5 NSL slabs.

6 Sir, whilst unfortunately there remains certain
 7 levels of uncertainty, and I don't shy away from saying
 8 that -- at times, one wonders whether things are as
 9 certain as perhaps they ought to be -- having stood back
 10 and thought about these matters, in my submission, the
 11 degree of uncertainty that exists should not ultimately
 12 affect the ability of the Commission to reach its
 13 conclusions and recommendations.

14 Sir, that really leads me on to this point, another
 15 perhaps unusual feature of this Inquiry: has there,
 16 I ask myself, ever been an Inquiry where relevant
 17 evidence has been and is still being produced by
 18 a process of opening up, uncovering on a daily basis the
 19 slabs with which this Inquiry is concerned?

20 As I stand here now, on the last afternoon of this
 21 Inquiry, we know that the opening-up continues and is
 22 likely to continue for a number of weeks hence. It may
 23 still be continuing when you are supposed to be
 24 submitting your report to the Chief Executive.

25 Sir, there are a number of facets to the opening-up

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1 process that I would just touch upon at this stage.
 2 Firstly, in the particular context of what has come to
 3 be described as butt-to-butt, one sees from the MTRC's
 4 closing submissions, perhaps understandably, a note of
 5 caution and an expression of reservation of rights,
 6 because of the late introduction or at least elevation
 7 to prominence of the butt-to-butt point.
 8 But, sir, perhaps at the end of the day, when one
 9 stands back and looks at it, it doesn't really matter.
 10 Sir, from the Commission's legal team's perspective,
 11 whilst we understand fully the approach that Mr Chow for
 12 the government explained yesterday by reference to the
 13 88 millimetres in the couplers, 44 millimetres each
 14 side, and so forth -- whilst we understand that, the
 15 difficulty we have is that in our submission, how does
 16 one look at this from a practical point of view? How
 17 does one look at a point, screwing in rebars, from the
 18 point of view of the Fang Sheung workers on site, who
 19 have been told in the BOSA material that it is
 20 permissible to have a maximum of two threads showing?
 21 Not just the Fang Sheung workers screwing in the
 22 rebar but the Leighton supervisors and the MTR
 23 supervisors and inspectors.
 24 The BOSA material tells them all that it's
 25 acceptable to have two threads showing, or approximately

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1 8 millimetres.
 2 So the Fang Sheung workers turn up to site, they
 3 take a long length of rebar, at the end of which is
 4 something approximating 40 to 44 millimetres of thread
 5 at the end of this long piece of rebar. The intention,
 6 in my submission, for those workers must be taken to be
 7 to screw that rebar in as far as it will go. Of course,
 8 they've got to make sure that it's as clean as possible
 9 and there's nothing obviously obstructing the ability to
 10 screw the rebar in. But, as Dr Glover said, as my
 11 learned friend Ms Chong said earlier today, the
 12 expectation is they will do their best and they will try
 13 to get the bar in as far as they possibly can. And the
 14 reality and the practicality is once they carry out that
 15 operation, if they can get it all the way in, that's
 16 great, it's good news, no problem, but if they reach
 17 a particular point where it won't go in any further,
 18 what do they do? They look at it. Provided it's only
 19 a couple of threads, they know they're all right,
 20 essentially. They get their wrench and they give it
 21 another turn, and if, provided there are only two
 22 threads or less showing, they think, "We've achieved
 23 what we have to achieve."
 24 Now, whether it's butt-to-butt, whether they've
 25 managed to thread the bar all the way in, frankly who

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1 knows? But if they've achieved a situation with only
 2 two threads showing, Leightons are going to say, "Tick",
 3 the MTR are going to say, "Tick", no problem; we have
 4 set out what we set out to achieve.
 5 Sir, the second point under this is -- and one
 6 doesn't want to be too critical, but the second point
 7 relates to the government's adoption of the figure of
 8 37 millimetres. Now, it may be, from the discussion we
 9 had a short while ago, that we are going to know -- it
 10 would be helpful if we do -- whether the 3 millimetre
 11 tolerance that the government have adopted, that's the
 12 40 millimetres, the 3 millimetre tolerance for the PAUT
 13 machine, is anywhere near accurate. Who knows?
 14 But, with respect, I do submit that the adoption of
 15 the 37 millimetre criteria is arbitrary, not in the
 16 sense that it doesn't have an explicable calculation
 17 that lies behind it, because it clearly does. It's
 18 arbitrary because there are, in my submission, a number
 19 of different figures that might rationally have been
 20 taken.
 21 For example, six threads, 24 millimetres, apparently
 22 gives rise to a factor of safety of 1.14. So that's one
 23 figure that could have been taken. We have
 24 Mr Southward's figure, six and a half threads, about
 25 26.5 millimetres; that's another figure that could have

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1 been taken. We have Prof McQuillan's figure of
 2 32 millimetres; that's essentially 40 millimetres, ten
 3 threads, less the two threads that can show,
 4 8 millimetres, to give you 32 millimetres. That's
 5 another figure that could have been taken. Another
 6 figure that could have been taken, slightly less than
 7 the government's, is 36 millimetres. So you assume
 8 you've got 11 threads rather than 10, you take off
 9 the 8, that would give you 36 millimetres.
 10 But, no, the government has chosen 37 millimetres,
 11 and as a consequence of that and the daily publication
 12 of the test results to the public, on the government
 13 website, anything that is below 37 millimetres is
 14 automatically viewed as a failure in the public's eyes.
 15 It's unfortunate but that is what has happened.
 16 What could have happened is the government could
 17 have published the results, as they have done, as they
 18 tell us in their closing, in the interests of
 19 transparency, and they could have said, "Here's a range
 20 of possible criteria, 24, 32, 36, 37", and then one
 21 could see the failures against each of the different
 22 criteria, rather than just the one that's been taken.
 23 In that sense, we respectfully submit that the figure is
 24 arbitrary.
 25 Sir, we are aware, you are aware -- we are all

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1 aware -- that the MTR hopes to carry out further tests
2 at different thread engagements. It is hoped that those
3 tests can be carried out sooner rather than later, and
4 I'm sure, of course, that those results will then need
5 to be looked at and will need to be taken into account.
6 That is, therefore, the one, if you like, point one
7 level of uncertainty that exists as we sit here today:
8 what will the MTR results throw up?
9 COMMISSIONER HANSFORD: Just to interrupt for a second, and
10 forgive me for this, but provided things go to the plan
11 that's intended, we will have that before we have to
12 produce our report?
13 MR PENNICOTT: Yes, sir. My understanding is, from what
14 we've been told so far as, that the expectation is that
15 the tests will be done on Friday of this week.
16 COMMISSIONER HANSFORD: Indeed.
17 MR PENNICOTT: A preliminary report or preliminary results
18 will be available on Monday the 4th, with a formal,
19 I think, report to follow about a week later. I think
20 that was the general timetable that Mr Boulding gave us.
21 COMMISSIONER HANSFORD: Yes.
22 MR PENNICOTT: And, sir, of course, uncertainty exists on
23 two fronts, I suppose. One is what are the results
24 going to show, and two is -- not something that
25 I imagine a lot people in this room will be terribly

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1 happy about -- but are you, sir and Professor, going to
2 require any further assistance in dealing with whatever
3 those results throw up. But until, I guess, we see
4 those results, one can't really express a view about
5 that.
6 But I can see from my own personal position that
7 there may be some necessity to consider not just the
8 ongoing test results that are being provided to us as
9 the opening-up continues but obviously also to look at
10 the MTRC results as and when they are made available.
11 Obviously, it will be a matter for you, sir, to
12 decide to what extent if at all you need any further
13 assistance from me, but of course, once we adjourn
14 today, in theory at least that should be the end of my
15 role in advising the Commission. Obviously you will
16 just get on with writing the report which I can't
17 participate in.
18 But obviously if certain ongoing evidential matters
19 arise with which you need assistance, then obviously we
20 are here to help, but it would be on the basis, I am
21 bound to say, that if I'm contacted about anything, then
22 all the involved parties would need to be contacted
23 simultaneously, to ensure that there wasn't any
24 perception of the Commission's legal team looking at
25 this material.

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1 So just sounding that note of caution and indeed to
2 give a degree of comfort to everyone else that nothing
3 will happen -- certainly I will not be doing anything,
4 unless I am sure that everyone in the room has been
5 advised or have been informed of the information we have
6 gathered and the questions that have been posed by you,
7 sir. Indeed I will no doubt welcome help from all my
8 learned friends in any event on those matters.
9 CHAIRMAN: That's why earlier today, again using a military
10 analogy, I said something about all counsel are still
11 confined to barracks, meaning that we simply don't know
12 what's going to rise up. If it's self-explanatory and
13 is contained within short circumference, that's fine,
14 but if fairness requires that we should receive
15 assistance from all counsel, then that will happen. It
16 will not be a question of just receiving assistance from
17 yourself.
18 MR PENNICOTT: No, sir.
19 CHAIRMAN: Unless what we ask you for is something
20 self-evident like "could you please go and get the
21 results from two days ago" or something purely factual
22 or administrative.
23 MR PENNICOTT: Yes.
24 CHAIRMAN: Anything relating to merit -- and I use that this
25 the broadest sense -- will have to be all-inclusive,

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1 involving all counsel.
2 MR PENNICOTT: Yes, sir. Good.
3 Sir, could I then move on? I just wanted to touch
4 on, I think, three general matters. The first is really
5 a matter that we have covered already in paragraph 12 of
6 our closing address, where we deal with the government's
7 point concerning paragraph (a)(iii) of the terms of
8 reference and whether or not the construction has taken
9 place in compliance with the contract. You will
10 remember the point that the government has made in
11 relation to that.
12 Sir, of course there is a slight dichotomy you might
13 find yourselves in, because on the one hand it is quite
14 clear that there are contractual matters that you have
15 quite rightly, in my submission, expressed a view about
16 not getting involved in, such as we know the change to
17 the top of the diaphragm wall, whether it was minor,
18 whether it's a foundation, whether the BD should be
19 consulted -- all of that area is something where, as
20 I understand it, and certainly I agree, you are not
21 going down that particular road.
22 But, on the other hand, one might give a different
23 example and the QSP is as good as any. On the one hand,
24 certainly so far as Leighton is concerned the QSP is
25 a contractual document in the sense it's something they

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1 have to comply with. Now, obviously there's an argument
 2 about what it applies to and I will perhaps mention that
 3 a bit later. But in principle it's something, as
 4 a matter of contract, Leighton needs to comply with.
 5 You might, therefore, have to think: what are
 6 Leighton's obligations under the QSP? And on one view,
 7 that is a matter of contract and it is a matter of
 8 compliance with the contract so far as Leighton is
 9 concerned.
 10 Not so much, it has to be said, MTR, because MTR's
 11 obligation under the QSP doesn't arise under the
 12 contract as between MTR and Leighton. It arises under
 13 the obligations elsewhere, because where it says in the
 14 contract, in the terms of reference, it means the
 15 contract between MTR and Leighton, by definition. As
 16 I say, MTR's obligations for supervision don't arise
 17 vis-a-vis the government under that contract; it arises
 18 in a different way.
 19 But there are aspects of the contract, it seems to
 20 me, that you simply can't avoid at least looking at and
 21 considering, because many of the obligations of course
 22 are set against that contract background, and you simply
 23 can't avoid it.
 24 CHAIRMAN: It doesn't mean, however, as I see it, and the
 25 wording I hope will be more accurate when it appears in

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1 the report rather than this observation -- we are
 2 looking more to conduct or lack of conduct. We are not
 3 seeking to identify contractual obligations per se, even
 4 though the difference between the two may, on a casual
 5 reading, not be that great.
 6 MR PENNICOTT: Yes, sir. I think that's right. I suppose
 7 what one is trying to avoid is getting into any detailed
 8 contractual interpretation, contractual analysis of
 9 a particular clause: what precisely does it mean? One
 10 is taking a rather broader view of the obligations.
 11 CHAIRMAN: Exactly. The same as one may find oneself in
 12 a position where you have to be critical of a party or
 13 individuals who work for or are employed by that party;
 14 it doesn't mean that you are making any finding of civil
 15 liability on their part, or criminal liability for that
 16 matter.
 17 MR PENNICOTT: No.
 18 CHAIRMAN: It just means that your terms of reference
 19 require you to do so.
 20 MR PENNICOTT: Yes.
 21 CHAIRMAN: Thank you.
 22 MR PENNICOTT: Sir, a second general point here. You will
 23 have seen, right at the tail end of our written closing
 24 address, that we have said something about the burden of
 25 proof and putting one's case and the standard of proof.

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1 I just wanted to deal with, really, the standard of
 2 proof.
 3 It seems to me there is no issue about burden of
 4 proof. There is no burden of proof of any particular
 5 party to prove any particular point. We have dealt with
 6 the putting of the case, and I know Mr So mentioned this
 7 this morning, but can I emphasise, whilst I accept the
 8 general proposition that there is no obligation in the
 9 context of this Inquiry to put a case, nonetheless, the
 10 fact that certain perhaps serious allegations have been
 11 made by one party against another party, if those
 12 allegations have not, as it were, been put by the party
 13 making the allegation against the other party, when it's
 14 had an opportunity to cross-examine their witnesses,
 15 particularly if they are a witness who is, if you like,
 16 the target of the allegation, then obviously that's
 17 a matter you can consider. It's not definitive, it's
 18 not conclusive, but it is a matter that you can put into
 19 the balance when you're weighing these things up.
 20 It is right, as Mr So indicated, that on certain
 21 allegations that were ostensibly being made by China
 22 Technology against certain individuals, particularly at
 23 Leighton, and take Khyle Rodgers as a prime example, as
 24 it happens, I decided that I would put that point
 25 myself, and I did, and as Mr So rightly said, I got

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1 a flat denial from Mr Rodgers, and I think Mr So is
 2 right that there was no necessity in those circumstances
 3 for him to have another go and put it again to
 4 Mr Rodgers. I accept that; that must be right.
 5 But I didn't do that with everybody. I decided to
 6 take what I regarded as the more obvious and direct
 7 allegations, that one being a very direct one, made in
 8 an email by Mr Poon, directed at Mr Rodgers, and I think
 9 I put it also to Mr -- who is the other gentleman that
 10 we were -- Mr Plummer as well, the two gentlemen who we
 11 videolinked from Australia, I put a similar point to him
 12 as well. I don't think it was just because they were on
 13 the videolink; there must have been a reason for it.
 14 I accept that if counsel for the Inquiry has put
 15 something, then there is no need for counsel for one of
 16 the parties to repeat it, but I didn't do that on every
 17 occasion. I was selective in what I did, and I had good
 18 reason to put it to some witnesses and not to others.
 19 But as I say, all those matters will be put into the
 20 balance by you, sir, when you are weighing up the
 21 evidence.
 22 CHAIRMAN: Yes. I think it can be said that we appreciate
 23 we are not bound by technical rules of evidence in an
 24 inquiry, but we are still bound to approach the matter
 25 in a judicial manner, by which I mean employing

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| <p style="text-align: right;">Page 173</p> <p>1 well-trying, well-tested indices of how best to weigh up 2 evidence. 3 But essentially we will do so without being limited 4 by technical rules and using our joint experience and 5 common sense and knowledge of the world and of people. 6 MR PENNICOTT: Yes. Indeed, sir. That really takes me to 7 the point I really wanted to mention which is the 8 standard of proof, not burden or putting one's case, but 9 the standard of proof that one is looking at here. 10 As we have said -- and we have cited the only 11 textbook that currently exists I think on public 12 inquiries, certainly in the English language, that's 13 Jason Beer on Public Inquiries, obviously focusing 14 mainly on the UK, and I understand a new edition is 15 coming out in March -- he says, rightly, in our 16 submission, that so far as the standard of proof is 17 concerned, it's all about flexibility in the context of 18 a commission of inquiry, and indeed it seems to me that 19 this Inquiry is a very good example of why flexibility 20 is the watchword because there are certain issues that 21 are before you -- again, let's take another -- let's 22 take the QSP as an example again, where when you are 23 looking at obligations under the QSP, whether it's 24 Leighton or whether it's MTRC, you might think, "Well, 25 it's the QSP, it's all about supervision; let's look at</p> | <p style="text-align: right;">Page 175</p> <p>1 coming in on a daily basis. And you might think that: 2 well, we can't really look at this simply on a balance 3 of probabilities; on this, we need a rather higher 4 degree of assurance, that is whether it's clear beyond 5 doubt, clear beyond reasonable doubt. 6 We have no doubt -- there's a rather different, it 7 seems to me, standard, a slightly different outcome of 8 the analysis that needs to take place when you are 9 considering an issue like that. And if ultimately, take 10 another example, is the structure safe?" -- the ultimate 11 question, "Is the structure safe?" You might think, and 12 in my submission you would be right, that the Hong Kong 13 public is not going to be particularly satisfied with 14 a finding or a determination that on the balance of 15 probabilities we think the structure is safe. It's 16 simply not going to work. On the contrary, you might 17 think, in addressing the question, "Is the structure 18 safe?", that a clear, firm, unequivocal determination to 19 that effect is required. 20 CHAIRMAN: You are to some degree not ahead of us, but we 21 are ahead of you in the sense -- I don't mean that in 22 a condescending way, far from it, but we are well aware 23 that I think it would give cold comfort, which is no 24 comfort at all, to the Hong Kong public, to say that on 25 a balance we think it's probably safe. So we are saying</p> |
| <p style="text-align: right;">Page 174</p> <p>1 this really on the balance of probabilities, insofar as 2 we need to make any determination, the balance of 3 probabilities is an appropriate, as it were, standard to 4 look at in the context of the QSP obligations." 5 And if one is weighing up witness evidence in that 6 context, and you are weighing up the lack of documents 7 under the QSP against what the witnesses have said to 8 you, you might think, "Well, let's do that on the 9 balance of probabilities. Yes, we believe the witness, 10 that is he went, he saw, he noticed, but he just failed 11 to make a record of it." So on a balance of 12 probabilities, you could say, "Yes, he did inspect; he 13 just failed to make a record of it." 14 But, sir, other issues -- let's say the issue is: is 15 there evidence of widespread, systematic cutting of 16 threaded rebar? That's a slightly -- not just 17 a slightly -- that's a rather more important, 18 significant or difficult issue, on one view, and you 19 have to look at all the evidence, the factual witness 20 evidence, the statements and the live evidence that we 21 have heard. You look at photographs that have been 22 provided. You look at the events surrounding the 23 NCR157. You look at the other incidents that both 24 Leighton and MTRC have given evidence about and accept 25 happened. You look at the opening-up results that are</p> | <p style="text-align: right;">Page 176</p> <p>1 to the Hong Kong public, "Off you go, over the next five 2 years. On balance, every time you go down there, it's 3 probably safe; don't worry, the roof is not going to 4 fall in, but on the other hand it may." That, in our 5 concerted view already, would be an abandonment of our 6 mandate. 7 MR PENNICOTT: Sir, yes. I'm just using this, of course -- 8 using you as a sounding board, in a sense -- 9 CHAIRMAN: Absolutely. 10 MR PENNICOTT: -- because there are -- when one is looking 11 at the whole question of standards of proof -- we 12 started off by saying flexibility and it rather depends 13 on what the issue is as to where you pitch it. 14 COMMISSIONER HANSFORD: We have been debating this point 15 since Christmas, so I wouldn't say we are there yet but 16 we are well aware of the issues. 17 MR PENNICOTT: At least it proves you haven't been debating 18 it with me. 19 COMMISSIONER HANSFORD: Yes. 20 CHAIRMAN: And it's quite right for you to bring this up. 21 Anything that I say now, sitting here, concerning our 22 approach to evidence is not definitive. It's for the 23 purposes of putting it out into the ether -- a small 24 amount of ether, I agree -- so that you can reply to it, 25 and if any suggestion we make is wrong then you can</p> |

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1 correct us now. That's the purpose of anything I'm
 2 saying.
 3 But we accept that flexibility is an issue, and we
 4 are certainly looking at a different test for the
 5 question of safety than we are to the question of
 6 weighing up certain evidence.
 7 MR PENNICOTT: Of course.
 8 CHAIRMAN: We accept that the test of balance of
 9 probabilities remains the balance of probabilities, but
 10 within that test, in the sense of the way you use it,
 11 there are obviously common-sense issues. To be
 12 convinced of one thing may require more compelling
 13 evidence to be convinced on a balance of probabilities
 14 than it would in respect of another thing.
 15 MR PENNICOTT: Right.
 16 CHAIRMAN: But it's very helpful. Thank you very much
 17 indeed.
 18 MR PENNICOTT: I thought, again, it's a matter that ought to
 19 be raised so that those not necessarily in this room
 20 have an understanding of the process.
 21 COMMISSIONER HANSFORD: Yes.
 22 CHAIRMAN: Yes.
 23 MR PENNICOTT: Sir, the third general matter I wanted to
 24 deal with is BOSA. My learned friend Mr So this morning
 25 gave a few details of the chronology of BOSA, and

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1 I wanted to give a slightly fuller, if I may say so,
 2 chronology of their involvement, because I think it
 3 might be helpful if I say what I want to say. It will
 4 go on the transcript and you will then have it, have the
 5 narrative, as it were, if you think you need to use this
 6 as part of the report, because it's going to be hard, in
 7 my respectful submission, for you to avoid not saying
 8 something about BOSA and their involvement, even though
 9 they are not an involved party. It simply seems to me
 10 to be unavoidable.
 11 Sir, the position, if I can deal with it this way --
 12 first of all, it is right that on 2 October 2018, we
 13 received from those previously instructing my learned
 14 friends Mr So and Mr To for China Technology the letter
 15 at D2/986, which he showed you at my invitation. It is
 16 quite clear that, first of all, that letter was written
 17 in the context of NAT and the leakage in NAT, and
 18 secondly, it's quite clear that what was being suggested
 19 is that three parties -- Hills, BOSA and Atkins -- might
 20 be able to provide assistance to the Inquiry. There is
 21 no suggestion they should be positively made involved
 22 parties, those three parties, just provide assistance.
 23 Well, of course, if I may say so, those instructing
 24 me were well onto this before that letter was received,
 25 having had -- by 2 October, the witness statements

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1 starting to come in and the papers coming in and lots of
 2 that analysis.
 3 So let me just tell you what happened. On
 4 18 October, the Commission's solicitors wrote to BOSA,
 5 arranging a briefing on how rebars should be connected
 6 and to conduct four experiments. The reference to that
 7 is A1/271 to 283. On 24 October 2018, BOSA wrote back,
 8 agreed to provide the briefing and to conduct two
 9 experiments -- basically, how quickly can you screw in
 10 the threaded rebar. On 6 November 2018, Prof McQuillan
 11 visited the BOSA factory with representatives of the
 12 Commission's legal team -- A1/435 to 684 -- and indeed
 13 saw the experiments. As I say, the reference I have
 14 just given show you all the photographs and all the
 15 other material that came out of that visit.
 16 COMMISSIONER HANSFORD: And indeed Prof McQuillan refers to
 17 this in his report.
 18 MR PENNICOTT: He does, sir.
 19 On 7 November, that's the day after -- I suppose it
 20 must have just been coincidence -- the Buildings
 21 Department wrote to BOSA and invited Paulino Lim to
 22 attend an interview on 27 November for the purposes of
 23 investigating the cutting of rebars. That's at
 24 H21/40628.
 25 On 13 November, Mr Lim wrote back to the BD and

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1 invited them, that is the BD, to attend their
 2 fabrication yard and, I quote, "to witness the full
 3 process of preparation of and different procedures for
 4 threading reinforcement bars for both type 1 and type 2
 5 couplers". That letter is at H21/40641.
 6 On 15 November, the Buildings Department visited
 7 BOSA's fabrication yard, pursuant to the invitation
 8 presumably. Photographs were taken by the site
 9 monitoring team of the Buildings Department; that's
 10 H25/44476 and H23/42321.
 11 On 21 November the tests that we've heard much about
 12 were conducted at the CASTCO Testing Centre. They were
 13 carried out in the presence of the BD's site monitoring
 14 team; see H23/42321 also. And during this visit on
 15 21 November, BOSA supplied the BD with their calculation
 16 table, Chinese version thereof. That's H25/44527, and
 17 again the reference, because the Buildings Department
 18 told us this, H23/42322.
 19 The CASTCO test reports are dated 21 November.
 20 Sir, what then happened was that on 27 November,
 21 just a week after the tests, Mr Lim attended before the
 22 Buildings Department and provided a witness statement to
 23 the Buildings Department. And annex 1 to his witness
 24 statement was the Chinese version of the calculation
 25 table that I've just mentioned.

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1 What then happened was that on 7 December -- and
 2 this is a point that Mr So correctly mentioned this
 3 morning -- with the government's, BD's, weekly discovery
 4 exercise, the Commission received on 7 December, and
 5 I believe then uploaded on to the Commission's
 6 website -- to the documents in the electronic bundle
 7 that the parties all received -- Mr Lim's witness
 8 statement, the tests that have been done -- results of
 9 the tests that have been done on 21 November, the CASTCO
 10 test reports, and also the Chinese version of the
 11 calculation table. So that was, as Mr So rightly said
 12 this morning, available to everyone on 7 December.
 13 On 10 December, the Commission asked Mr Paulino Lim
 14 to come to give evidence before the Commission. That
 15 was on the 10th. On 13 December, BOSA wrote to the
 16 Buildings Department and provided certain training
 17 records that the Buildings Department had asked for and
 18 a summary of the couplers that had been provided or
 19 supplied on the project.
 20 Now, sir, you asked a question about that before
 21 lunch --
 22 CHAIRMAN: Yes, I did.
 23 MR PENNICOTT: -- while Mr Connor was on his feet. It may
 24 be that we need to break this down, but I'm not sure
 25 it's exactly what you were looking for, but can we put

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1 up on the screen, please, H26/45187. We did see this
 2 I think at some point but I couldn't find it on the
 3 transcript, but I know we've looked at it before.
 4 This is H26/45187.
 5 COMMISSIONER HANSFORD: I'm sure we saw this during Mr Lim's
 6 cross-examination.
 7 MR PENNICOTT: Quite possibly, that's it, and I just didn't
 8 have time to chase it all down.
 9 COMMISSIONER HANSFORD: I think we did.
 10 MR PENNICOTT: Yes. On H45189, you will see the training
 11 attendance records. You can just run through a couple
 12 of pages. Then if you go to 45194, you start seeing the
 13 series of invoice numbers and so forth in relation to
 14 the couplers, and that runs on for a number of pages,
 15 and if you go to 45200, there you find at the top of the
 16 page the total number of couplers, 384,737, and then
 17 a breakdown of the Seisplite or ductile or
 18 non-ductile --
 19 COMMISSIONER HANSFORD: The difficulty we had with this
 20 before -- sorry, Mr Pennicott; I'm sure you were going
 21 to come here -- my recollection is we know that this is
 22 what was purchased, but we don't necessarily know that
 23 this was what was installed or how many were
 24 subsequently taken out.
 25 MR PENNICOTT: Correct. So, sir, this is the starting

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1 point.
 2 COMMISSIONER HANSFORD: Okay.
 3 MR PENNICOTT: And of course what you've got here is
 4 384,000-odd couplers or 324,000 couplers, ductile
 5 couplers, for the entirety of the C contract 1112 works,
 6 diaphragm walls, EWL slab, NSL slab, everything, as
 7 I understand it.
 8 However, we know from other documents that if one is
 9 focusing -- if the focus of attention is the top of the
 10 east diaphragm wall, then we know from the MTR's 15 June
 11 report that they were at that time quoting 23,500
 12 couplers as being the total in the EWL slab of the east
 13 and west diaphragm walls. See B124. And they were
 14 saying that in addition to those 23,500, approximately
 15 19,800 couplers were at the 31 construction joint
 16 locations, that is between the various bays that we know
 17 about.
 18 So that's where we were on 15 June.
 19 Then, as we know, that was subsequently corrected by
 20 the MTR and, as I understand it, the only figure that
 21 changes the 23,500 in the top of the east diaphragm
 22 wall -- sorry, not at the top -- in the east diaphragm
 23 wall was changed, by a reduction of 2,000, to 21,500.
 24 In other words, it appears -- well, if one assumes
 25 that the original figure made the assumption that there

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1 were couplers everywhere, and then one assumes that the
 2 reduction accounts for the change to the through-bars,
 3 it seems to me about 2,000 were put in and not used, and
 4 discarded. That seems to be the implication. But
 5 that's obviously just the focus on the top of the east
 6 diaphragm wall.
 7 CHAIRMAN: Thank you.
 8 COMMISSIONER HANSFORD: But I'm not quite sure how that
 9 relates to the purchase order that we were shown ten
 10 minutes ago.
 11 MR PENNICOTT: No, that so far is a bridge too far, even for
 12 me.
 13 COMMISSIONER HANSFORD: I think that's where I was as well.
 14 MR PENNICOTT: Sir, I was up to 13 December and the email
 15 from BOSA. On 17 December, Mr Lim attended before the
 16 Commission of Inquiry and gave oral evidence.
 17 Sir, I wasn't planning -- I can do but I wasn't
 18 planning -- to go beyond the date upon which he gave
 19 evidence, but we know that subsequently there has been
 20 correspondence between the Buildings Department and
 21 BOSA, and very much more recently between BOSA and MTR
 22 as well, and I can give you all the references or we can
 23 give you the references if you need them, but I hope
 24 that will be an administrative matter rather than
 25 a substantive matter.

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| <p>1 CHAIRMAN: Yes.</p> <p>2 MR PENNICOTT: The point that was made by Mr So this morning</p> <p>3 was that: well, when Mr Lim was in the witness box,</p> <p>4 nobody asked him -- the MTR, Leighton, government, dare</p> <p>5 I say China Technology itself -- nobody asked him about</p> <p>6 the tests and the threaded rebar and so forth. I mean,</p> <p>7 obviously he had some questions about butt-to-butt, as</p> <p>8 we have seen from you, sir, Prof Hansford, but nobody</p> <p>9 actually got in and asked him about all the tests and</p> <p>10 the different engagements of the thread and the tests</p> <p>11 that were done.</p> <p>12 And so one stands back and says: why was that? The</p> <p>13 answer is: because nobody realised at the time that this</p> <p>14 was an important consideration, certainly not as</p> <p>15 important a consideration as it's now become.</p> <p>16 One then stands back again and says: if Mr Lim was</p> <p>17 in the witness box now, and we know everything that we</p> <p>18 now know, who would have been questioning him? I accept</p> <p>19 entirely that I probably would have asked him plenty of</p> <p>20 questions about the test results and the calculation</p> <p>21 sheet, and so forth, now understanding its relevance and</p> <p>22 import. I don't see, I have to say, why the MTR or</p> <p>23 Leighton would be particularly interested in asking</p> <p>24 Mr Lim any questions particularly about those matters,</p> <p>25 because of course those matters essentially support the</p> | <p>1 10th, but in terms of actual results, it was very early</p> <p>2 days and we may have had just a handful of results in</p> <p>3 but certainly nothing to indicate where all this was</p> <p>4 headed.</p> <p>5 COMMISSIONER HANSFORD: Yes.</p> <p>6 MR PENNICOTT: We had had a few results, I think, by the</p> <p>7 17th but not many.</p> <p>8 CHAIRMAN: Sorry, I think Mr So wished to say something.</p> <p>9 MR SO: I hesitate to interrupt. Just to assist, I have</p> <p>10 mentioned that in my closing submission three results</p> <p>11 were obtained on the day when Mr Lim gave evidence and</p> <p>12 on the other day there were five results and all the</p> <p>13 five results were failed, according to the 37mm</p> <p>14 standard, of course.</p> <p>15 CHAIRMAN: Yes.</p> <p>16 MR PENNICOTT: So, sir, a limited number of results is the</p> <p>17 answer when Mr Lim was giving evidence.</p> <p>18 COMMISSIONER HANSFORD: But despite this limited number of</p> <p>19 results, still no questions were asked on this point.</p> <p>20 MR PENNICOTT: No, by anybody, as I understand it.</p> <p>21 CHAIRMAN: And I would add this, that in deciding whether to</p> <p>22 send a Salmon letter to a party, this Commission,</p> <p>23 obviously taking into account the advice of yourself,</p> <p>24 Mr Pennicott, as counsel to the Commission, will</p> <p>25 determine what party should receive those Salmon letters</p> |
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| <p>1 case of the MTR and Leighton, and the expert evidence</p> <p>2 that they called.</p> <p>3 The reason I would have asked questions is because</p> <p>4 of my capacity as counsel to the Commission, to try to</p> <p>5 understand what this information was all about. The</p> <p>6 parties that would have been more interested, I suspect,</p> <p>7 in asking Mr Lim the questions, if he was sat in the</p> <p>8 witness box now, would be the government and China</p> <p>9 Technology, because of course it's them that are seeking</p> <p>10 to cast a large shadow of doubt upon both the</p> <p>11 calculation, as I understand it, and the test results.</p> <p>12 So there is a slight concern that Mr Lim's</p> <p>13 cross-examination may well have taken a slightly</p> <p>14 different course had we, on 17 December, known then what</p> <p>15 we know now, or if he had been here today.</p> <p>16 But, sir, that's the way it is. That's the nature</p> <p>17 of these inquiries, all the critical and perhaps more</p> <p>18 important matters sometimes just don't get focused on.</p> <p>19 COMMISSIONER HANSFORD: To state the obvious, Mr Pennicott,</p> <p>20 at the time of Mr Lim's cross-examination, we didn't</p> <p>21 have any of the opening-up results.</p> <p>22 MR PENNICOTT: Well, no. Sir, the opening-up had started on</p> <p>23 10 December and it was very much early stages, and we</p> <p>24 obviously didn't -- I think probably the results started</p> <p>25 to come in, from recollection -- we had reports from the</p> | <p>1 and what should not on a serious basis. It doesn't toss</p> <p>2 them out like confetti, just saying, "Anybody that's</p> <p>3 relevant, let's make them an involved party."</p> <p>4 MR PENNICOTT: Indeed.</p> <p>5 CHAIRMAN: There is not exclusively but there is in part</p> <p>6 an invisible underscoring that people who receive Salmon</p> <p>7 letters may, not necessarily, be criticised and</p> <p>8 therefore in fairness should have an opportunity to be</p> <p>9 able to answer any criticism that may, but not</p> <p>10 necessarily, arise.</p> <p>11 As far as the decision to make BOSA an involved</p> <p>12 party was concerned, it was a decision made by the</p> <p>13 Commission at the end of the day, that BOSA could assist</p> <p>14 but need not be made an involved party because we didn't</p> <p>15 see that other than good faith assistance, there was any</p> <p>16 reason that it should have to go out and get legal</p> <p>17 representation and everything else, which is what</p> <p>18 happens when you receive a Salmon letter.</p> <p>19 MR PENNICOTT: Yes.</p> <p>20 CHAIRMAN: I just thought that should be mentioned.</p> <p>21 MR PENNICOTT: I think that's right, sir. Things change</p> <p>22 but --</p> <p>23 CHAIRMAN: Whether that's right or wrong or whether the</p> <p>24 answer is we have a witness who has already assisted the</p> <p>25 Commission and the question is should we invite that</p> |

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1 witness back again -- that to me is the real issue.
2 It's not whether the person is involved or not. It's
3 simply perhaps we had questions that we can now ask him
4 because they've now become relevant.
5 MR PENNICOTT: Yes.
6 CHAIRMAN: But that may still arise. A lot will depend on
7 what transpires. But I would rather, for myself as
8 Chairman, see what transpires before we consider whether
9 we invite back Mr Lim to assist us further.
10 MR PENNICOTT: Yes, sir. I think that's right. You are
11 right to emphasise that the Salmon letters all say,
12 without exception, "might be criticised", and certainly
13 as you are well aware the Commission's legal team's
14 view, for example, in relation to Intrafor, is that
15 they, Intrafor or any of their -- Mr Gillard or anybody
16 concerned with Intrafor should not be the subject of any
17 criticism in your report. They are part of the story.
18 But why were they brought in?
19 We had a reminder of that yesterday when Mr Cohen
20 was making his closing submissions. They were brought
21 in, unfortunately for them, because of what was in the
22 media -- the photographs and the videos all turned out
23 to be frankly just irrelevant, wrong, misleading, but
24 unfortunately for Intrafor that's why they got dragged
25 into this, and they managed quite rightly, in our

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1 respectful submission, to -- through careful production
2 of documents, and obviously because of the way in which
3 they conducted the sub-contract works and the diaphragm
4 wall works themselves -- they have fully explained away
5 their position.
6 So that's unfortunate, and no doubt they have been
7 put to considerable time and expense as a consequence of
8 this, but there was no option but to bring them in as
9 an involved party at the beginning, but, you know,
10 that's the other way around, if you like, to BOSA
11 perhaps. But there we are.
12 Sir, can I just come back to a point Mr So mentioned
13 about the daily inspection reports, because I need to
14 correct the position as it was on 17 December, when
15 Mr Lim gave evidence. The answer is we didn't have any
16 of the reports by 17 December.
17 COMMISSIONER HANSFORD: We didn't?
18 MR PENNICOTT: We did not, no, because I've been helpfully
19 shown the very first page in the OU file, that's the
20 opening-up file, which is an email of 19 December from
21 those instructing me to those instructing Mr Boulding
22 for the MTR, saying:
23 "We refer to our email below" -- which was
24 an earlier email of 12 December -- "wherein we requested
25 (since 12 December 2018) daily inspection records and

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1 reports to be supplied to the Commission. We note that
2 to date [that is on the 19th], such records and reports
3 have not been provided."
4 And it was from 19 December that we then received
5 the daily reports. So the daily reports were not in the
6 possession of the Commission on 17 December.
7 COMMISSIONER HANSFORD: Yes. That's as I recall.
8 MR PENNICOTT: Sir, can I move on? What the public want to
9 know from this Commission is whether the structure is
10 safe. First and foremost, nobody, none of the involved
11 parties, none of the five experts engaged by the
12 Commission and four of the involved parties, says that
13 it is not safe.
14 Prof McQuillan --
15 CHAIRMAN: Well, I --
16 MR PENNICOTT: Bear with me.
17 CHAIRMAN: I read it slightly differently. In fact, if
18 I remember, Mr Chow yesterday said it would not be
19 prudent --
20 MR PENNICOTT: No, they are not saying it's not safe. What
21 they are saying -- and I'm coming to this --
22 CHAIRMAN: Yes.
23 I have your point. Carry on. That will help me.
24 Thank you.
25 MR PENNICOTT: So Prof McQuillan -- let's take the experts.

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1 Prof McQuillan, Dr Glover, Mr Southward, the Commission,
2 MTR and Leighton respectively, all express the view that
3 it is safe.
4 Prof Au and Prof Yeung do not say it is not safe.
5 The Commission's legal team, having evaluated and
6 weighed up the evidence as best they can, the MTR,
7 Leighton, Atkins, Fang Sheung all say that it's safe.
8 China Technology and the government again are not
9 saying that it's not safe. I think Mr Coleman for Pypun
10 doesn't express a view one way or the other. Intrafor
11 clearly say that the diaphragm walls are safe, but that
12 probably is something that is an aside more than
13 anything else, because of course it's the structure, the
14 whole of the structure, that we are talking about.
15 Sir, the government and as I understand it China
16 Technology urges the Commission to essentially adopt
17 a "wait and see" approach, because, as the government
18 say, at their heading D3 in their submissions,
19 "premature to form a view on the question of whether the
20 as-built ... structure is structurally safe" --
21 "premature", they say, hence my "wait and see".
22 Sir, they advance six reasons for their "wait and
23 see" approach. One is the alleged uncertainty in the
24 connection at the top of the east diaphragm wall. Two,
25 the holistic proposal, stage 3, is going to answer the

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1 very question, they say, so inferentially they seem to
 2 be saying the Commission should not. Three, the
 3 embedded length of rebar needs further investigation and
 4 determination. Four, elongation tests and cyclic load
 5 tests are required. Five, strength utilisation,
 6 redundancy in other terminologies, should not be overly
 7 emphasised, I quote, "should not be overly emphasised".
 8 COMMISSIONER HANSFORD: Which -- sorry, I don't wish to
 9 interrupt. Carry on.
 10 MR PENNICOTT: And six, other quality issues -- we are
 11 talking about honeycombing and all of that -- have to be
 12 taken into account at stage 3. So there's a sort of
 13 overlap between that point and the second one.
 14 COMMISSIONER HANSFORD: There's actually an overlap between
 15 your last two points.
 16 MR PENNICOTT: There is, sir. I've just taken those six
 17 points out of their section D3.
 18 COMMISSIONER HANSFORD: Because they are related to --
 19 MR PENNICOTT: There's a degree of overlap, there must be,
 20 I agree.
 21 COMMISSIONER HANSFORD: Okay.
 22 MR PENNICOTT: And so, as I understand it, it is said that
 23 what the Commission should do is reach no definitive
 24 conclusion at all, adopt essentially the Buildings
 25 Department approach to these matters, that until every

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1 box is ticked, every i is dotted and every t is crossed,
 2 no decision should be made.
 3 Sir, the Commission is not the Buildings Department.
 4 The Commission is not the government. The Commission is
 5 not Prof Au. It is a tribunal that operates
 6 independently and ultimately has to decide on the
 7 evidence placed before it.
 8 What the government does not say, and quite rightly,
 9 and I've already touched on this, is that on the basis
 10 of the evidence, the structure is unsafe. It very much
 11 is a question of "wait and see"; that is their position.
 12 What does the government and China Technology, to
 13 the extent they adopt the same position, overlook? Sir,
 14 can I respectfully suggest that in their "wait and see"
 15 approach, what perhaps is overlooked are the following
 16 matters.
 17 First of all, so far as the construction joint is
 18 concerned, and as you are aware this is all to do with
 19 Prof Au's calculations and the like, the preponderance
 20 of expert evidence is that there is no issue in relation
 21 to this construction joint. And, sir, one thing that
 22 has been, with respect, overlooked, in my submission, is
 23 the last sentence of paragraph 3 of the structural
 24 engineering experts' joint statement. Could we just
 25 look at that on the screen, please. It's in

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1 Prof McQuillan's report at page 118. Thank you.
 2 Sir, we very much focused on the first couple of
 3 lines and the bit in brackets, but the last sentence --
 4 all signed up to by five experts:
 5 "Notwithstanding [ie notwithstanding the
 6 qualification], all agreed the outcome would not show
 7 the construction joint to be problematic."
 8 COMMISSIONER HANSFORD: Yes.
 9 MR PENNICOTT: So what appears to be suggested is that,
 10 first of all, further information, base data, be
 11 provided to Prof Au; that once that's provided, further
 12 calculations are done, presumably by Prof Au or under
 13 his supervision; and then presumably those calculations
 14 will be provided to the Commission, I imagine; therein
 15 perhaps entering another point of uncertainty going
 16 forward.
 17 COMMISSIONER HANSFORD: Depending on the timing.
 18 MR PENNICOTT: Depending on the timing.
 19 But all of that against the background of Prof Au
 20 signing up to "notwithstanding, all agreed the outcome
 21 would not show the construction joint to be
 22 problematic".
 23 Sir, it is not really a matter for me at the end of
 24 the day, but that is a rather important sentence,
 25 certainly when looked at in the context of the

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1 information that Prof Au has requested, on which topic
 2 can we have a look, please, at H27/45878.
 3 Sir, you will see here -- obviously it's easier in
 4 hard copy -- the "List of structural checks on the
 5 connection" that has been set out by Prof Au, and then
 6 in the "Time required" column on the right-hand side:
 7 "A few days (provided that the checks are to be
 8 conducted by properly qualified professionals and the
 9 base data including the internal forces and the
 10 reinforcement details are available)."
 11 Then if we could scroll down, please, to the next
 12 page. One then sees, in the "Remarks":
 13 "1. The above proposed checks are intended only for
 14 providing a preliminary view ...
 15 2. For more accurate assessment of the potential
 16 concerns, the up-to-date configuration (including the
 17 as-constructed reinforcement details, the structural
 18 dimensions of the as-constructed structures, as well as
 19 the loading cases, loading combinations and internal
 20 forces and moments adopted by the designer) should be
 21 adopted for the structural checks."
 22 Then if we could go to the next page, please --
 23 a couple of pages on, please; keep going -- 25882.
 24 That's it, yes, thanks. This is a schedule or sheet
 25 that came with the DoJ's letter, with Prof Au's list,

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| <p>1 and as I understand it, to put it rather colloquially, 2 I think what's being asked for is, "Can somebody please 3 fill in the blanks?" 4 COMMISSIONER HANSFORD: Yes, I'm sure. 5 MR PENNICOTT: I may be wrong about that. 6 COMMISSIONER HANSFORD: No, I think that's the -- 7 MR PENNICOTT: I think that seems to be the general thrust 8 of it. Well, there we are. With all that, Prof Au will 9 go away and carry out some calculations. 10 Sir, it's a matter for you whether -- I don't know 11 whether that's going to happen; if it is going to 12 happen, when it's going to happen, and no doubt we will 13 be kept informed of any progress on that front, as 14 Mr Connor has indicated and no doubt the government as 15 well. 16 COMMISSIONER HANSFORD: But the point you are making -- you 17 have already made to us, Mr Pennicott -- is that the 18 experts agree that the outcome would not show it to be 19 problematic? 20 MR PENNICOTT: You've got two things. You've got a body of 21 expert opinion that says, for all the reasons they have 22 given, and I'm not proposing to go into it, the clamping 23 and so forth, it's simply not an issue, it really isn't 24 an issue, but in any event, second point, the experts 25 say, "We can carry out this check as a matter of</p> | <p>1 from the police investigation into a number of the rebar 2 have made their way, as I understand it, to the MTR. 3 Sir, I am also told that there is a degree of 4 reluctance to, as it were, make that information 5 available unless the Commission indicates that it would 6 like to see it. Certainly, sir, in my respectful 7 submission, we would like to see it, and therefore, 8 insofar as the MTR require you to give a direction, 9 I would invite you to do so. 10 CHAIRMAN: Does anybody have any comment they wish to make? 11 It seems to me we have been discussing this matter at 12 some length. It's certainly got a critical centrality 13 at this moment in time, and we are a Commission of 14 Inquiry and it would be good to enquire as to exactly 15 what evidence the police have managed to obtain. 16 So I would give a direction that all evidential 17 matters that are relevant in respect of the context in 18 which you have just raised this issue, Mr Pennicott, 19 should be made available to the Commission. 20 MR PENNICOTT: Thank you very much, sir. 21 I'm sure the MTRC have heard that. 22 MR BOULDING: Yes, we have certainly heard that, sir. We 23 ought to make it clear that it's not a question of 24 reluctance on our part. It's just we would feel far 25 more comfortable in circumstances where you have just</p> |
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| <p>1 prudence", or however they put it, but they have all 2 signed up to a proposition that says actually it's not 3 going to make any difference. 4 COMMISSIONER HANSFORD: Yes. 5 COURT REPORTER: Excuse me, it's been two hours since the 6 last break. 7 MR PENNICOTT: I did get a note a short while ago that 8 somebody else wanted a break as well, but let's have 9 a break. 10 CHAIRMAN: Thank you. 11 COMMISSIONER HANSFORD: Forgive me, just one point before 12 the break. You said, "What do they overlook", and this 13 was the first point -- will you be coming to more? 14 MR PENNICOTT: Yes. 15 CHAIRMAN: Thank you. 15 minutes. 16 (4.31 pm) 17 (A short adjournment) 18 (4.53 pm) 19 CHAIRMAN: Apologies again for keeping everybody somewhat 20 longer than anticipated, but matters have arisen. Thank 21 you. 22 MR PENNICOTT: Sir, matters certainly have arisen. 23 I understand that following the exchange that we had 24 earlier this afternoon between Mr Shieh, Mr Boulding, 25 myself and yourselves, that certain results emanating</p> | <p>1 directed us to hand over what we -- 2 CHAIRMAN: It's entirely understandable. If I was a police 3 officer in charge of this investigation, I wouldn't just 4 hand things over on somebody's say-so. I would require 5 some authority that I knew. 6 MR BOULDING: Much obliged. Thank you, sir. 7 MR PENNICOTT: Thank you. 8 Sir, back to questions of structural safety, "wait 9 and see", and what, as the government -- I used the word 10 "overlooked" and that's probably not the right word -- 11 but perhaps have not taken sufficiently into account 12 would be a better way of putting it, and I apologise if 13 I have overstated the position. 14 I have dealt with the construction joint point and 15 the calculations, and so forth, and I'm not going to 16 repeat that. 17 Sir, the next point is the redundancy, the 18 utilisation point. As I hope I accurately quoted 19 earlier, they say, the government says, that should not 20 be overly emphasised. We say, with respect: why? Why 21 should it not be taken into account? 22 Clearly, of all the evidence you have heard, the 23 expert evidence you have heard from all the experts, 24 indicates -- all the calculations that have been done by 25 various firms of engineers -- shows that there is a very</p> |

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| <p>1 significant redundancy in this structure. It shows, to 2 put it around the other way, variable but low 3 utilisation.</p> <p>4 Why then should strength utilisation not be 5 over-emphasised? In my submission, it should be 6 a matter of emphasis. Clearly, all the structural 7 engineers accept, although perhaps not exactly on the 8 percentages, that there is significant strength -- that 9 the strength utilisation is an important factor, and in 10 my submission that is a matter that should be at the 11 forefront of your thinking in terms of structural 12 safety.</p> <p>13 Sir, the next point is one which, if I may say so, 14 Mr Connor in his written submissions, and as articulated 15 earlier, has made very clearly, and indeed has helpfully 16 set out the statistics and the numbers for us. It must 17 not be forgotten that so far as the EWL slab is 18 concerned and the east diaphragm wall is concerned, that 19 in terms of where the couplers are connecting the EWL 20 slab to the diaphragm wall is a relatively small area.</p> <p>21 Mr Connor broke it down in terms of metres. One can 22 look at it in terms of panels. There are 75 panels on 23 the east diaphragm wall, in areas B and C, that is from 24 panels 40 to 115. Therefore, and knowing from the 25 engineering expert evidence that the critical rebar is</p> | <p>1 is an inconsistency in the evidence of Prof McQuillan, 2 a point that I might add that was carried through to 3 a certain press release.</p> <p>4 It's wrong. The bottom steel of the EWL slab is in 5 compression and it does not need, for safety purposes, 6 the rebar. The Code of Practice for Structural Use of 7 Concrete does not permit the bottom steel to be included 8 in shear calculation. Only the top steel and 9 a contribution from the concrete section should be taken 10 into account when you are doing shear calculation. 11 That's explained by Prof McQuillan, particularly in the 12 diagram at page 71 of his report.</p> <p>13 However, Prof McQuillan does accept that the bottom 14 steel will provide enhancement, necessarily, because 15 it's there. But the point is it cannot be taken into 16 account in the shear calculation, as I have said. In 17 other words, the shear capacity satisfies the code 18 requirement without taking into account the bottom 19 rebar. That's the point. There's no inconsistency. 20 It's quite clear.</p> <p>21 Sir, on that particular topic, I refrain from 22 getting into questions of over-design or conservatism in 23 the design of the structure, for reasons that you 24 discussed with Mr Connor earlier.</p> <p>25 Sir, so far as the NSL slab and the D-walls are</p> |
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| <p>1 the top rebar, in tension, at the top of the EWL slab, 2 only a very small proportion has that detail. The rest 3 of it is through-bars and the point just doesn't occur.</p> <p>4 All of this, the allegations about rebar cutting and 5 so forth, I don't know whether it's sunk into the minds 6 of particularly, if I may say so, the media and the 7 public out there, that we are actually, at the end of 8 the day, talking about a very small area. We are not 9 talking about the whole length of this wall in areas B 10 and C. It's a very limited area where --</p> <p>11 COMMISSIONER HANSFORD: The problem has been removed by the 12 through-bars.</p> <p>13 MR PENNICOTT: Yes, the problem has been removed by the 14 through-bar to a very large extent. This is a point 15 that doesn't seem to have been emphasised enough.</p> <p>16 COMMISSIONER HANSFORD: Thank you.</p> <p>17 MR PENNICOTT: And, sir, so far as the bottom of the EWL 18 slab is concerned, again, it's in compression. There is 19 rebar there to meet the requirements of the Code of 20 Practice, but it is essentially, in terms of safety, 21 redundant. It doesn't matter. Again, a point that with 22 respect seems to be overlooked in this case.</p> <p>23 Sir, on that particular point, can I just mention 24 this, that in paragraph 28 of China Technology's 25 submissions, they assert or appear to assert that there</p> | <p>1 concerned, can I also remind you that it was unanimously 2 agreed by the structural engineers, as recorded in their 3 joint statement, that the invasive investigation of the 4 D-walls and the NSL slabs should be reviewed. Now, 5 there's a view among some of the experts -- 6 Prof McQuillan, Dr Glover, and so forth -- that in fact 7 one could for the purposes of safety probably stop now. 8 Of course it's understood that the holistic proposal is 9 in place and whilst the experts take the view that so 10 far as the D-wall of the NSL slab is concerned, there 11 ought to be a review -- well, if the MTR and the 12 government have decided that this is what's going to 13 take place, then one is not suggesting that it should be 14 stopped. The experts have expressed their view, but 15 I don't think, with respect, it would be for the 16 Commission to step in and say, "You must stop"; that's 17 simply not going to work. They are going to have to 18 continue.</p> <p>19 The outcome of that is that of course we are going 20 to continue to receive more and more results as time 21 goes on.</p> <p>22 COMMISSIONER HANSFORD: On this point, Prof McQuillan also 23 made the point, did he not, about the dangers related to 24 extensive work on the NSL slab because of the head of 25 water that's being held back?</p> |

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1 MR PENNICOTT: I think, if I have understood
2 Prof McQuillan's report properly, that was in relation
3 to the bottom of the NSL slab.
4 COMMISSIONER HANSFORD: It was.
5 MR PENNICOTT: And in fact nothing is being done to the
6 bottom of the NSL slab.
7 COMMISSIONER HANSFORD: Okay.
8 MR PENNICOTT: So I think that point was taken on board --
9 COMMISSIONER HANSFORD: That's fine.
10 MR PENNICOTT: -- and nothing is being done.
11 The two places that are not being, if you like,
12 opened up and tested is at the bottom of the NSL slab,
13 for the reasons Prof McQuillan has given, and the top of
14 the west diaphragm wall, because of different design.
15 COMMISSIONER HANSFORD: Yes.
16 MR PENNICOTT: The next point on this whole question is all
17 to do with the other issues, the honeycombing and so
18 forth. Again, all of the experts appear to be agreed
19 that this is not a matter of safety; they are all
20 reparable issues and really a bit of a side issue so far
21 as safety is concerned.
22 Sir, the last point I think on all this is the point
23 that's been made a number of times: this structure has
24 been in place, depending on which part of it you are
25 looking at, between three and four years. It's been

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1 carrying 90 per cent of the load that it will ever carry
2 for a long period of time. There are no signs, in terms
3 of safety, whatsoever of distress which would give rise
4 to any safety concerns.
5 COMMISSIONER HANSFORD: Wasn't the point a little bit more
6 than that, that in addition to that it's actually taken
7 the worst of its loads already?
8 MR PENNICOTT: During the course of construction, yes, sir.
9 Sorry, there is one more point on this, and it's
10 a point that was made by Dr Glover, by reference to the
11 results of the opening-up that he had seen. By the time
12 Dr Glover gave evidence, which was on 17 and 18 January,
13 and the day before he gave evidence, 16 January, we had
14 80 results in from the opening-up process.
15 You will recall his evidence, sir, about the fact
16 that the trend had been set, and in his opinion it
17 wasn't going to get any worse, it may not get any
18 better, but it wasn't going to get worse; the trend had
19 been set. Whilst he accepted that he wasn't an expert
20 in statistics, he expected this trend to continue.
21 If I may say so, we have now got something like 116
22 or 117 results, so 36 or 37 results on from where we
23 were when Dr Glover gave evidence, and it seems, in my
24 submission, that that evidence is right: the trend
25 continues. Whatever the accuracy and so forth of the

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1 results, the trend is the same; it's continued since the
2 experts gave evidence.
3 Sir, I am now, I hope, about to go into acceleration
4 mode.
5 CHAIRMAN: Sorry, could you just help me here.
6 MR PENNICOTT: Sure.
7 CHAIRMAN: Three or four years -- between three and four --
8 my adding up is obviously not very good; I'm just
9 thinking --
10 MR PENNICOTT: The diaphragm walls started in 2013.
11 CHAIRMAN: Yes.
12 MR PENNICOTT: And continued to 2015.
13 CHAIRMAN: Yes, that's right, 2015.
14 MR PENNICOTT: Then obviously the EWL slab was built between
15 about June/July 2015 to January 2016, and the NSL slab
16 built from about January 2016 to July 2016. That's
17 broadly --
18 CHAIRMAN: Thank you very much.
19 MR PENNICOTT: It's not exact.
20 COMMISSIONER HANSFORD: The consequence of that is the most
21 severe loads occurred during 2016?
22 MR PENNICOTT: Yes, I think that's right. Well, the EWL
23 slab -- I would think between probably June 2015/July
24 2015 and June 2016.
25 COMMISSIONER HANSFORD: Yes. That was the most severe

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1 period of loading for that structure?
2 MR PENNICOTT: Yes.
3 CHAIRMAN: But that's because of the top-down --
4 COMMISSIONER HANSFORD: Because of the top-down construction
5 and also because the NSL slab was created later, which
6 provided a prop at the bottom, and also because the
7 diaphragm walls were not fully supported during the
8 top-down position; they were under temporary conditions.
9 MR PENNICOTT: Yes, and I think the barrettes --
10 COMMISSIONER HANSFORD: Sorry, and the barrettes and the
11 internal walls came later, which improved the loading
12 conditions.
13 MR PENNICOTT: Correct. That's right.
14 COMMISSIONER HANSFORD: Probably not the barrettes,
15 actually. The barrettes were there already. But the
16 internal walls came later.
17 MR PENNICOTT: Yes.
18 So, sir -- yes, okay, let's just have a look --
19 three or four years -- I suppose three years is probably
20 more accurate.
21 COMMISSIONER HANSFORD: Yes.
22 MR PENNICOTT: Right. Now, sir, I am just now going to try
23 to tick off some subject matter that I don't need to
24 deal with.
25 Right, Intrafor, no further comment.

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1 Sir, so far as the evidence on the cutting of the
 2 threaded rebar, you have heard from all parties,
 3 including us, on this topic. So far as the Fang Sheung
 4 evidence is concerned, since it's been raised, can
 5 I just say a couple of things?
 6 The government and China Technology have launched
 7 a little bit of an attack on the credibility and so
 8 forth of the Fang Sheung witnesses. One understands,
 9 I think, why that attack has been made and I am bound to
 10 say that it is not without a degree of merit. But what
 11 the Commission's legal team has done is try to take
 12 an overall assessment, looking back on the statements,
 13 the transcript obviously, I'm bound to say paying less
 14 attention to the statements that were given previously
 15 to the MTR, not really knowing the precise circumstances
 16 and what have you and the recordings, and not placing
 17 quite so much weight on those matters but rather placing
 18 more weight on what happened here, in this room, and
 19 reach an overall conclusion. Of course there are
 20 deficiencies, there are inconsistencies, which we
 21 acknowledge, in the Fang Sheung evidence, but based on
 22 an overall assessment of their evidence, it seemed to us
 23 that, as we've said, the attack by the government and
 24 China Technology is somewhat exaggerated, we would
 25 respectfully submit.

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1 Sir, so far as China Technology's evidence is
 2 concerned, again we have dealt with that in fairly
 3 minute detail, as have others. There are,
 4 unfortunately, lots of internal inconsistencies between
 5 the China Technology witnesses, particularly Mr Jason
 6 Poon on the one hand and his employees on the other.
 7 Sir, we have expressed our concluded view on the
 8 overall conclusion we feel should be reached with regard
 9 to Mr Poon's evidence and its lack of reliability.
 10 There is no need for Mr So to apologise to me for
 11 disagreeing, just because I'm counsel to the Commission.
 12 He is perfectly entitled to disagree with me as with
 13 anybody else, so I certainly don't need any apologies.
 14 I think Mr So is probably right that regarding the
 15 events concerning the sign-in/sign-out records, which we
 16 haven't actually mentioned in our submissions but
 17 clearly there were distinct problems with the Leighton
 18 sign-in/sign-out process on this site.
 19 Sir, I say no more about the China Technology
 20 evidence so far as the threaded rebar cutting. But the
 21 point so far as Mr Poon is concerned of course goes
 22 wider than just the threaded rebar cutting and what he
 23 saw or perhaps he didn't see. It goes to a whole raft
 24 of allegations that he had conversations with people,
 25 Mr Rodgers and Mr So, with Mr Rooney, with Dr Philco

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1 Wong, Mr Zervaas or Mr Speed and others, all of whom
 2 deny having any of those conversations, broadly
 3 speaking, with Mr Poon.
 4 In those circumstances, really what other conclusion
 5 can one reach than, well, they can't all be lying. The
 6 conclusion that one must reach, in my respectful
 7 submission, looking at it objectively, is that I'm
 8 afraid Mr Poon has made up a lot of those conversations
 9 and has made up a lot of those allegations. Unfortunate
 10 as it is, that, in our respectful submission, is the
 11 only objective conclusion that one can reach.
 12 Sir, in our closing submissions, we also deal with,
 13 so far as threaded rebar cutting is concerned, the
 14 evidence of Leighton's Mr Mok and of course the MTR's
 15 Kobe Wong and Andy Wong. I say no more about all of
 16 that.
 17 Sir, also in our closing we deal with what we call
 18 the escalation of the cutting incidents, and that deals
 19 firstly with the alleged conversation with Mr Rooney,
 20 which I have just mentioned, the events of January 2017
 21 and the conversations with Mr Zervaas and the commercial
 22 deal and so forth. We then go on and deal with the
 23 September 2017 events, and it's quite clear, we submit,
 24 that all of those discussions and events that took place
 25 in January 2017 to September 2017 were all against

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1 an obvious backdrop of the commercial dispute that
 2 existed between China Technology and Leighton.
 3 Sir, we have also looked at the Lumb report, at
 4 paragraphs 144 to 146 of our closing, and have reached
 5 not a terribly favourable view about the Lumb report,
 6 saying that it wasn't exactly an exercise in
 7 investigative rigour; that would put it perhaps nicely.
 8 Likewise with regards to the MTRC review, again, one
 9 tries to look at it objectively, but it was, with
 10 respect, a fairly superficial exercise and didn't really
 11 take the matter perhaps where it should.
 12 Sir, so far as all the evidence that you have heard
 13 about the QSP is concerned, that's the quality
 14 supervision plan, it is our submission that it applied
 15 to the diaphragm walls -- there is no issue about
 16 that -- the EWL slab and the NSL slab, all couplers, all
 17 locations where the ductile couplers were used, without
 18 exception. And we have set out our submissions in
 19 relation to that, and I say no more about it.
 20 So far as the full-time and continuous supervision
 21 obligation is concerned from Leighton, again we have set
 22 out what our position is, basically taking the line or
 23 view that was taken by Mr Rowsell in his report. I know
 24 one might regard this as a matter of contractual
 25 interpretation and perhaps the experts should not quite

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1 have gone as far as they did, but nonetheless these are
 2 experienced people, "full-time and continuous
 3 supervision" means things to them, and on the basis that
 4 this Inquiry is entitled to take into account evidence
 5 without drawing strict lines as to the overlap between
 6 evidence and issues of law, nonetheless we say that
 7 Mr Rowsell has got it right so far as the meaning of
 8 "full-time and continuous supervision" is concerned.
 9 Sir, so far as the change of design and detail to
 10 the top of the east diaphragm wall is concerned, as you
 11 are aware, there are essentially three aspects to it.
 12 There's the safety aspect, which is to do with the
 13 connection details, whether further calculations need to
 14 be done, and I've dealt with that and I'm not saying any
 15 more about it. The second aspect is the process aspect;
 16 that is the first change and the second change, to what
 17 extent the Buildings Department should have been
 18 consulted and to what extent as-built drawings should
 19 have been produced as they went along, and so forth. So
 20 there's the process aspect of all of that. Then there's
 21 a third element to this, which is another -- really
 22 another subset of the process aspect, which is whether
 23 BD should have given prior acceptance or whether it was
 24 acceptable to go to BD afterwards.
 25 Sir, on that second change point, can I say this,

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1 because we didn't deal with this in any detail in our
 2 closing submissions. We have obviously had the
 3 opportunity to read Mr Connor's written submissions and
 4 heard his oral submissions today in relation to Atkins'
 5 knowledge of the second change. Obviously, if you need
 6 to, you will look at that, but I am bound to say, from
 7 the Commission's legal team point of view, it seems to
 8 me that on the analysis, proper analysis of the
 9 evidence, it probably is, on the balance of probability,
 10 the case that Atkins did not know about that second
 11 change.
 12 Sir, retrospective records. We have dealt with
 13 those at paragraphs 214 to 230 of our closing address,
 14 and I don't propose to say anything more about that.
 15 There have been valiant attempts on behalf of both the
 16 MTR and Leighton to provide some justification for the
 17 production of those records, but as I think my learned
 18 friend Mr Boulding said yesterday, with hindsight and in
 19 the cold light of day, probably things could have been
 20 done a bit differently.
 21 Sir, I have mentioned as-built drawings and records
 22 already. We deal with that in paragraphs 231 to 234 of
 23 our closing address and I say no more about that.
 24 Sir, could I then just say a few words about the
 25 opening-up? Obviously we have touched on this already.

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1 It seems to us, with respect, that the government's
 2 summary at paragraph 59 of their submissions is a good
 3 and accurate summary of where we were when the
 4 government produced its submissions. There are now more
 5 results in that don't amend the government's figures
 6 drastically, only in a very minor sense. So that's
 7 where to look, in my respectful submission, for a good
 8 summary of the results of the opening-up.
 9 In that context, it would, in our respectful
 10 submission, be wrong to conclude at the moment -- things
 11 could change -- that any more than two rebar have been
 12 found cut. That is the ones we know have got very short
 13 threads on them.
 14 There is at the moment, in our submission, no reason
 15 to conclude that any more have been cut, that is
 16 a type A having been cut.
 17 We have heard quite a lot of evidence and some
 18 submissions regarding the possibility of type B bars
 19 being shortened, to essentially convert them into
 20 type A, and it's a little unclear as to where we are,
 21 how one works out how or why that would have happened,
 22 and with the various results that have come through can
 23 one actually make any conclusions from those results to
 24 the effect that, "That must have been a type B bar that
 25 has been shortened to a type A." It's difficult, not

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1 impossible, one might be able to reach that sort of
 2 conclusion with regard to a limited number of the
 3 results, but not terribly easy.
 4 Lots depends upon the accuracy of the
 5 instrumentation that is being used to measure the
 6 engagement length of the bars, and, as I say, it's
 7 difficult to draw any overall conclusions about type B
 8 into type A.
 9 Sir, can I, however, ask you, please, to look at
 10 appendix A to China Technology's closing submissions.
 11 Whilst mentioned in passing in Mr So's closing address,
 12 I'm not quite sure -- but I know that this has been
 13 taken and slightly modified from Prof Yeung's report --
 14 I don't quite know what conclusions one is being asked
 15 to draw from this table.
 16 What has, as I understand it, happened is the
 17 engagement length for 22 of the tests has been taken,
 18 3 millimetres has been on to it, and I imagine that's
 19 the same 3 millimetres that the government uses for the
 20 PAUT results but I'm not sure.
 21 Then what's been added to that engagement length
 22 is -- let's take number 4, the very first one, as
 23 an example -- because the results are showing there are
 24 one to two threads showing, benefit of the doubt is
 25 being given, and therefore it's two and therefore

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1 8 millimetres is added to the 34.61, to arrive at
 2 a result of 44.61 in relation to the first item.
 3 As I understand it, that is being contrasted or the
 4 figures, sorry, in the final column, "Maximum possible
 5 total length", is being contrasted with the figure of
 6 44 millimetres, said presumably to be derived from
 7 a BOSA type A bar with presumably 10.5 or 11 threads,
 8 and the inference presumably we are asked to draw is
 9 that frankly anything below 44 suggests perhaps some
 10 form of cutting. But I don't know whether that's what
 11 we are supposed to draw. But if it is, I draw attention
 12 to the fact that if you just cast your eye down, one's
 13 looking at figures, the second one, 43.65; 43.78; 42.38;
 14 43, 43, 43 -- one is getting very close to the 44 mark.
 15 To suggest that somehow because the current results are
 16 showing that because there's a lesser length than
 17 44 millimetres, this shows something, sir, I with
 18 respect don't accept.
 19 I don't also understand how one could possibly
 20 conclude from any of these results that a type B bar had
 21 been converted into a type A.
 22 So, as I say, I am bound to say that just for
 23 an update, if China Technology's table was continued --
 24 and I think this was the point that Mr So was making
 25 earlier today -- I think one would add another probably

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1 eight or nine results to his table, to come to 30-odd,
 2 and one could do a similar analysis as he's got here
 3 because the way it works is that if you've got no
 4 threads showing, then on the left-hand side it has to be
 5 less than 41, and if you've got between zero and one
 6 it's got to be less than 37, if you've got one to two
 7 it's got to be less than 33; and that's how it works.
 8 So I have added on eight or nine results that we have
 9 had since China Technology compiled this table.
 10 Sir, lastly in our closing, we have sought to,
 11 I hope helpfully, summarise the project management
 12 recommendations that have been made by Mr Rowsell and
 13 Mr Huyghe.
 14 I hope that summary is helpful to the Commission in
 15 making your determinations as to the recommendations
 16 going forward, as it were, on the project management
 17 front.
 18 Sir, unless I can help you further at this stage,
 19 that's all I have to say, although I would like to say
 20 one or two thank yous but perhaps you can tell me
 21 whether you wish to ask anything first.
 22 CHAIRMAN: Yes. The evidence of the police?
 23 Can I just say at this moment in time that in case
 24 in the public arena there is some misunderstanding as to
 25 the relationship between counsel to the Commission and

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1 the Commission: the counsel to the Commission is tasked
 2 with the very difficult job of bringing together all the
 3 evidence and presenting it and testing it to a degree,
 4 and obviously counsel to the Commission is entitled to
 5 adopt his own views as to how the evidence should be
 6 approached, and may suggest to the Commission how that
 7 evidence may be approached.
 8 His representations, however, are for the assistance
 9 of the Commission, if the Commission wishes to adopt
 10 them, either part or in whole. The fact that
 11 Mr Pennicott has said certain things does not mean that
 12 the Commission will necessarily adopt them. The
 13 Commission is independent of all parties, including the
 14 counsel himself, and may I say, as much as we are
 15 indebted to Mr Pennicott's assistance, we do not treat
 16 any suggestions that he puts forward any differently
 17 from suggestions put forward by any other counsel
 18 representing any other party.
 19 The reason I mention that is in case there is any
 20 misunderstanding in the public arena as to our
 21 independence. Mr Pennicott himself said that once we
 22 retire to write our report, obviously he has no further
 23 involvement and that is correct. The report is written
 24 solely by Prof Hansford and myself, and while we have
 25 a Secretariat, that assists us with many things,

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1 administrative arrangements and the like, and brings to
 2 us matters that require our attention, that Secretariat
 3 is purely administrative in nature and again we reach
 4 our decisions in our report independently of the
 5 Secretariat.
 6 I mention that, Mr Pennicott, because you may have
 7 anticipated, there's apparently been some public
 8 interest in that issue.
 9 MR PENNICOTT: Yes, sir.
 10 CHAIRMAN: I think, in fairness, we are not simply dealing
 11 with every query that arises but it was something I was
 12 going to mention, because it's understandable that there
 13 may be some misunderstanding as to the relationship that
 14 you have with the Commission.
 15 MR PENNICOTT: Yes, sir.
 16 CHAIRMAN: Thank you.
 17 MR PENNICOTT: Thank you very much indeed for saying that,
 18 because it is an important matter, and whilst I think
 19 everybody within the confines of this room and perhaps
 20 in the next room amongst the legal teams fully
 21 understands it, it's obviously sometimes not a matter
 22 that is fully understood outside of the hearing.
 23 CHAIRMAN: Yes.
 24 MR PENNICOTT: Sir, can I endorse everything you have said,
 25 and it's right, we have to form our own views, but they

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1 are to be accepted or rejected just like anybody else's
 2 submissions. Whilst we hope you will find our diagrams
 3 useful and various other parts, of course the rest of
 4 it, at the end of the day, is a matter for you weighing
 5 up all the evidence in the light of the submissions you
 6 have heard from everybody, not just me.
 7 CHAIRMAN: Yes. I would also just add here that it doesn't
 8 mean that suddenly counsel for the Commission is going
 9 to be put into some form of isolation from us.
 10 Occasionally, if we are looking for -- Mr Pennicott
 11 mentions diagrams and that is actually apposite because
 12 we have gone through on a couple of occasions and said,
 13 "We are looking for a diagram that will show X or Y; can
 14 you find it?" So that sort of assistance but not
 15 assistance in any way related to the merits of our
 16 decision-making.
 17 Right, let's move on.
 18 MR PENNICOTT: I thought I had finished but I haven't. We
 19 have just been handed a sheet of paper with what look
 20 like some results on. Hmm. Right.
 21 CHAIRMAN: Yes, Mr Jat.
 22 MR PENNICOTT: Mr Jat is going to explain them? Excellent,
 23 that saves me from doing it.
 24
 25

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1 HOUSEKEEPING
 2 MR JAT: May it please you, sir. Pursuant to the directions
 3 of the Commission we have been able to obtain clearance
 4 to provide the information that we have presented. This
 5 is the information presented to us.
 6 May I just explain it from my understanding? The
 7 police have taken six examples, and the first four are
 8 currently item numbers -- I go from 1, 2, 3, 4 down --
 9 48, 72, 1 and 2 in the tables of the daily results. The
 10 latest one I think is in page OU560.
 11 Sir, I understand that the police, before they
 12 remove the samples, they use paint to mark the coupler
 13 and the rebar, the edge, where the coupler and the rebar
 14 connects, and then they cut away part of the rebar and
 15 take out the entire assembly. So the coupler and the
 16 rebar are taken out.
 17 That would mean, therefore, the coupler would have
 18 a cavity, which is the rebar still in the wall. That
 19 was measured. That measurement is not here. But then
 20 the rebar which is the subject of the testing is then
 21 unscrewed and the embedded part is measured by a ruler.
 22 That is the actual measurement on the right-hand side,
 23 the right column, that you see.
 24 So, of the four samples taken, although the PAUT
 25 results are shown, these are reproduced, the first

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1 two -- the PAUT results and the exposed threads are
 2 copied from the table. The actual measurements are
 3 shown on the right-hand side. So if you are comparing
 4 like with like, take the first one, the PAUT result is
 5 33.98, but when the rebar is removed from the coupler,
 6 the actual measurement is 39 millimetres.
 7 CHAIRMAN: That's the actual amount embedded in the coupler?
 8 MR JAT: Embedded in the coupler. So it's measured from the
 9 end to the edge of the white mark.
 10 CHAIRMAN: Yes. Thank you.
 11 MR JAT: And from my understanding, although this will have
 12 to be confirmed, my understanding is that those who were
 13 present, from a visual inspection, would come to the
 14 view that none of those have been cut. In fact, I am
 15 told that at least for three of the samples, they could
 16 actually see the chamfer very clearly.
 17 COMMISSIONER HANSFORD: So, Mr Jat, what this is purporting
 18 to tell us is that the actual length of thread was in
 19 one case 39 millimetres and in three cases
 20 40 millimetres?
 21 MR JAT: Yes.
 22 COMMISSIONER HANSFORD: It's therefore invalidating the PAUT
 23 results? In that respect.
 24 MR JAT: Insofar as those four samples, yes, in that
 25 respect.

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1 COMMISSIONER HANSFORD: The PAUT results?
 2 MR JAT: We will have to look at the PAUT results with care.
 3 COMMISSIONER HANSFORD: Yes. Okay. It's interesting that
 4 three out of four are 40 millimetres and one of them is
 5 1 millimetre shorter than that.
 6 MR JAT: Yes.
 7 COMMISSIONER HANSFORD: Thank you.
 8 MR JAT: That 1 millimetre could be because of the way the
 9 paint is applied, I do not know, but 1 millimetre is
 10 very little.
 11 COMMISSIONER HANSFORD: I know what 1 millimetre is. Thank
 12 you anyway.
 13 MR JAT: We have those results then.
 14 CHAIRMAN: Thank you, Mr Jat.
 15 Good. Yes, Mr Khaw?
 16 MR KHAW: I will make sure Prof Hansford can get on the
 17 plane tonight, but before we sing Auld Lang Syne and
 18 before we --
 19 COMMISSIONER HANSFORD: Just for the avoidance of doubt,
 20 then he is coming back again.
 21 MR KHAW: Thank you -- are recalled to service, there are
 22 three matters I wish to very briefly update the
 23 Commission.
 24 The first matter arises from the exchange between
 25 Prof Hansford and Mr Connor, that is in relation to the

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|---|---|
| <p>1 calculations.</p> <p>2 Obviously Mr Chow yesterday gave an open invitation</p> <p>3 to the parties concerned, requesting for further</p> <p>4 information, which has been actually listed in one of</p> <p>5 the documents supplied by us.</p> <p>6 We certainly do not want to generate another big</p> <p>7 bundle of documents by putting forward further</p> <p>8 correspondence, et cetera. We trust that the concerned</p> <p>9 parties will come back with the necessary base data, in</p> <p>10 accordance with the list of data which has been supplied</p> <p>11 by us.</p> <p>12 Just for the sake of completeness, the list of data</p> <p>13 which has been requested by us can be found in H27/45882</p> <p>14 to 45884. I'm grateful for Mr Connor's update that this</p> <p>15 is an ongoing process. The Commission can rest assured</p> <p>16 that once we get hold of the base data, calculations</p> <p>17 will be carried out as soon as possible.</p> <p>18 CHAIRMAN: Thank you.</p> <p>19 MR KHAW: Regarding the rebar tests as proposed by the MTR,</p> <p>20 we know that a proposal was sent by MTR last night and</p> <p>21 the government in fact has responded to the proposal.</p> <p>22 We have already sent out our comments on the proposal,</p> <p>23 setting out certain observations regarding how the test</p> <p>24 should be done.</p> <p>25 In relation to the issues which have been raised, we</p> | <p>1 treat the matter sensibly.</p> <p>2 CHAIRMAN: All right. Good. Thank you very much. Because</p> <p>3 it really does seem to us to be -- if only at the end of</p> <p>4 the day on the basis of thoroughness -- an important set</p> <p>5 of tests, and when I say "only on the basis of</p> <p>6 thoroughness" I mean they are important in any event, in</p> <p>7 all respects, but even -- no matter how confident your</p> <p>8 views may or may not be in respect of other things,</p> <p>9 I think we need these results.</p> <p>10 MR KHAW: Yes.</p> <p>11 CHAIRMAN: Much earlier today, I spoke about a sense of</p> <p>12 humour failure, and I think that both I in Hong Kong and</p> <p>13 Prof Hansford for his short stay in London will have</p> <p>14 a sense of humour failure if the parties are unable to</p> <p>15 agree in a sensible way -- that these tests are started,</p> <p>16 at least, before the onset of Chinese New Year.</p> <p>17 MR KHAW: I fully appreciate that. That's why I believe if</p> <p>18 each party treats the matter sensibly, matters can be</p> <p>19 resolved.</p> <p>20 CHAIRMAN: Thank you.</p> <p>21 MR KHAW: The third matter is perhaps something which arose</p> <p>22 from the Commission's exchange with me and also with</p> <p>23 Mr Chow during our closing submissions. That point was</p> <p>24 once again picked up by Mr Pennicott. That is in</p> <p>25 relation to the wish to make a firm and definitive</p> |
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| <p>1 believe, we hope, that differences can be resolved</p> <p>2 fairly soon, and we note the target date as proposed by</p> <p>3 MTR. We also hope that the target date can be achieved.</p> <p>4 But just to inform the Commission that we have already</p> <p>5 responded to the proposal received yesterday.</p> <p>6 That is the second point that I wish to update the</p> <p>7 Commission.</p> <p>8 COMMISSIONER HANSFORD: Without giving us all the details of</p> <p>9 it, Mr Khaw, how long are those comments? Do they</p> <p>10 extend into many pages?</p> <p>11 MR KHAW: Altogether, I think in terms of full pages, three</p> <p>12 pages.</p> <p>13 COMMISSIONER HANSFORD: I see. Thank you.</p> <p>14 CHAIRMAN: Sorry, are those comments both positive, neutral</p> <p>15 and negative, or are they all negative?</p> <p>16 MR KHAW: I won't try to put them in subjective terms.</p> <p>17 CHAIRMAN: All right.</p> <p>18 MR KHAW: But I believe they are helpful comments for the</p> <p>19 purpose of the tests.</p> <p>20 CHAIRMAN: All right. But there's nothing there that</p> <p>21 presents to you at this moment in time a barrier which</p> <p>22 cannot be happily set to one side? In other words, you</p> <p>23 don't see any reason why anything there should prevent</p> <p>24 these tests going ahead in some form that is agreed?</p> <p>25 MR KHAW: I believe they can be resolved if both parties</p> | <p>1 finding on structural safety. As Mr Chairman has</p> <p>2 pointed out, this is a conceptual question that you and</p> <p>3 Prof Hansford have been pondering over for some time.</p> <p>4 CHAIRMAN: Yes.</p> <p>5 MR KHAW: I also note what Mr Pennicott said regarding the</p> <p>6 burden of proof and also the "wait and see" approach</p> <p>7 that he has put to the Commission.</p> <p>8 We only wish to say this. We note that the</p> <p>9 Commission obviously finds it very important to express</p> <p>10 a firm and definitive view on structural safety, and</p> <p>11 I fully appreciate that. That's why I believe that when</p> <p>12 I expressed the words "interim report", it's probably</p> <p>13 not a very attractive idea to the Commission. I fully</p> <p>14 appreciate that. But in reality, how one is going to</p> <p>15 resolve this difficult conceptual question really boils</p> <p>16 down to whether one is in a position to form a firm and</p> <p>17 definitive view, after taking into account all the</p> <p>18 evidence available.</p> <p>19 COMMISSIONER HANSFORD: Yes.</p> <p>20 MR KHAW: Setting aside the question of burden of proof,</p> <p>21 obviously we need, and I'm sure Mr Pennicott agrees with</p> <p>22 me on this point, cogent and sufficient evidence in</p> <p>23 order to form a view on structural safety.</p> <p>24 So, in the circumstances, obviously if the</p> <p>25 Commission is of the view that you can form this view</p> |

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1 after taking into account all the evidence, a view will
 2 be formed accordingly. But what we wish to point out is
 3 that Mr Chow in his submissions yesterday has emphasised
 4 the importance of stage 3 of the holistic plan. By
 5 doing so, we fully appreciate that the holistic plan
 6 does not per se form part of the terms of reference.
 7 I fully appreciate that. And it's something which has
 8 been conducted and is being conducted in parallel to
 9 this Inquiry.
 10 What I wish to emphasise is that we are not --
 11 CHAIRMAN: Sorry, I'm interrupting you. From my
 12 perspective -- and I put it out so that you can comment
 13 on it -- if safety is a central issue, and I appreciate
 14 it's not the only issue, there are other issues of great
 15 importance, but the fundamental underlying issue is
 16 safety, then anything that helps us to resolve the issue
 17 of safety is relevant and falls within the terms of
 18 reference.
 19 MR KHAW: Yes.
 20 CHAIRMAN: The fact that the matters that we would wish to
 21 take into account have been brought about by some
 22 ancillary body or some ancillary process is neither here
 23 nor there. If it's relevant, then we should look at it.
 24 So if we are going to give a firm opinion, because
 25 we think that an opinion that is not firm is not helpful

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1 to the public and doesn't really do honour to our
 2 mandate, we are in a position then to say, "On
 3 an interim basis we think X, but we don't think that we
 4 can come to a firm conclusion without the results of
 5 tests A, B and C. And so this is our interim report,
 6 which we are entitled to give, and let's wait and see
 7 the results of other tests."
 8 If, however, we feel we don't need those other
 9 tests, we can nevertheless say, "We are happy, we don't
 10 need them, but that's not to say that those other tests
 11 may not be of assistance in allaying any residual public
 12 concern", or something like that.
 13 I'll stop now so you can shoot me down if you think
 14 it's necessary.
 15 MR KHAW: I am grateful for what you have just indicated.
 16 I just want to make it absolutely clear that we are not
 17 saying that the Commission should wait or should not
 18 publish the report until stage 3 is completed. This is
 19 not our stance.
 20 CHAIRMAN: No.
 21 MR KHAW: What we are trying to say is that if it is a case
 22 where ultimately the Commission, after taking into
 23 account all the available evidence, takes the view that
 24 there are doubts in relation to this question of
 25 structural safety, then these doubts should obviously be

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1 set out in the report.
 2 And taking into account the fact that there will be
 3 a stage 3 of the holistic plan which will be conducted,
 4 that of course is something that the Commission can also
 5 consider, if the Commission feels that there may be
 6 a way to address such doubts at that stage, ie at
 7 stage 3. That's the only point that I wish to make in
 8 response to Mr Pennicott's point regarding "wait and
 9 see". We certainly are not of the view that we should
 10 wait and see the result of stage 3 before the report is
 11 published. So that point we wish to make clear.
 12 COMMISSIONER HANSFORD: But that point only applies should
 13 the Commission have residual doubts.
 14 MR KHAW: Of course. As I said, if the Commission is of the
 15 view that a firm and definitive view can be formed now,
 16 then a view will be published in the report accordingly.
 17 CHAIRMAN: Thank you, Mr Khaw. That helps us a great deal,
 18 it really does, and it does help to clarify matters.
 19 Thank you.
 20 MR SHIEH: Sir, may I just -- it must be the hour of the
 21 day, it's been a very long day and I may have become
 22 a little bit slow -- I just wish for clarification
 23 purposes and for the record to try to understand the
 24 table that has been helpfully handed up by the MTR, and
 25 I express my gratitude to the MTR for dealing with this

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1 matter so quickly.
 2 Mr Jat explained the table that he has shown us.
 3 For the first item, for example, the PAUT result was
 4 33.98 millimetres. The actual measurement was
 5 39 millimetres. Exposed number of threads, zero.
 6 Mr Chairman asked: is that the embedded length? And
 7 the answer was yes.
 8 Now, because the exposed thread was zero -- because
 9 the exposed thread is zero, the embedded length of the
 10 thread would be the same as the length of the entire
 11 thread. So therefore I just wish to clarify, for the
 12 next few items -- for example, I will just read the next
 13 case, which happens to be the worst out-of-range
 14 example -- the PAUT result was 28.79 millimetres. The
 15 actual measurement was 40 millimetres, an outage of more
 16 than 11 millimetres.
 17 Can I just clarify whether that -- and there are one
 18 to two exposed threads -- so may I just clarify, in this
 19 case, whether the actual measurement of 40 millimetres
 20 is the measurement of the embedded length or the entire
 21 length of the threads?
 22 MR JAT: Thank you, sir, Professor. As I said, as
 23 I understand it, the "Actual measurement" column is the
 24 embedded length.
 25 The "PAUT result" column and the "Exposed thread"

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1 column are copied from the existing tables. They are
 2 not part of this preliminary -- this testing by the
 3 police. They are just simply data copied from those
 4 tables. I do not know -- at the moment, I'm not able to
 5 confirm whether the police also measured any exposed
 6 threads. That I do not know. But the right-hand side
 7 column, the actual measurement, I understand, is the
 8 embedded part.
 9 As I say, that is the end of the rebar up to the
 10 white mark.
 11 MR SHIEH: So comparing like with like, it would be 28.79
 12 versus 40?
 13 MR JAT: Correct.
 14 MR SHIEH: 34.91 versus 40? This is like reading it into
 15 the record for the press.
 16 MR JAT: And 29.65 versus 40.
 17 MR SHIEH: Thank you very much.
 18 MR JAT: I just want to emphasise that these are police
 19 investigation results and they will continue as part of
 20 the holistic proposal stage 2 works. I do not know how
 21 many more samples the police will take, but I understand
 22 that this exercise will continue.
 23 CHAIRMAN: All right.
 24 MR SO: I just wish to -- I'm really sorry to have detained
 25 you.

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1 CHAIRMAN: That's all right. This is an Inquiry. I think
 2 I used the word "dynamic" at some stage, and it's
 3 proving to be so right up to the 11th hour. Yes.
 4 MR SO: Just two points to make, the first in regards to the
 5 first item that was shown in the results just handed up
 6 by MTR. The result, we note it's 39 and that's less
 7 than 44. That's the first thing, obvious.
 8 The second issue is if the actual measurement is the
 9 embedded length, which is 40 -- let's take the fourth
 10 sample as an example -- then if the exposed thread being
 11 4, then times 4mm of the pitch, that would make the
 12 total length being 56mm on the threads.
 13 So these are two observations that I have.
 14 CHAIRMAN: Yes. Thank you. Good. Anything further?
 15 MR CONNOR: I think just very briefly from me, sir. I don't
 16 want you or Prof Hansford to leave the bench with any
 17 misunderstanding as to what the status is in relation to
 18 the calculations which are the subject of the open
 19 invitation that Mr Khaw referred to. As of now, the
 20 update that I have is that there is no request to Atkins
 21 in relation to that data, notwithstanding the public
 22 open invitation, but you will understand that Atkins is
 23 not in a position to respond to that directly. We must
 24 await the chain contractually to reach us, to enable us
 25 to respond to that.

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1 So, as matters stand, there is no update other than
 2 we await that direction.
 3 CHAIRMAN: All right. I'm sure --
 4 MR CONNOR: But that can be clarified in correspondence.
 5 CHAIRMAN: That will be activated by Atkins, if required,
 6 receiving a direct invitation.
 7 MR CONNOR: Thank you.
 8 CHAIRMAN: And that can be done via yourself?
 9 MR CONNOR: It can be done as and when we are requested
 10 formally to do it through the contractual chain, and as
 11 and when that happens then of course it can be confirmed
 12 through correspondence with the solicitors for the
 13 Commission.
 14 CHAIRMAN: All right. Thank you.
 15 MR PENNICOTT: Sir, I am determined to have the last word.
 16 It's only to say a few thank yous.
 17 Sir, first of all, can I thank all my fellow
 18 counsel, solicitor advocates, solicitors, trainees of
 19 all the legal teams that have been participating as
 20 involved parties in this Inquiry, for their assistance,
 21 cooperation, and a general ability to get on with one
 22 another. We have had our moments but generally speaking
 23 it's been a pleasurable experience.
 24 Sir, can I then secondly thank the Secretariat for
 25 the efficient administration of the Inquiry. A lot goes

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1 on behind the scenes that people don't see. I've seen
 2 some of it but I'm sure not much of it. Can I also in
 3 particular thank the operator of the electronic bundle,
 4 Kiki Chan, for the fantastic job that she has done
 5 throughout, particularly moving the Chairman's hand.
 6 Thirdly, can I thank the transcript writers for
 7 their unfailing dedication and as always their quite
 8 remarkable accuracy.
 9 Fifthly, can I thank all the staff, the security
 10 staff and all other staff in the venue that have been
 11 working here for the last three or four months. They
 12 have also played their part in ensuring the smooth and
 13 efficient running of this Inquiry.
 14 Sir, lastly but not least, can I thank you and
 15 Prof Hansford for your hard work, your patience and your
 16 unfailing courtesy to us all. Thank you very much.
 17 CHAIRMAN: Thank you. I'm getting the last word, you see.
 18 I know Prof Hansford and I have found it a very
 19 enjoyable experience and that comes about for two
 20 reasons, not simply the amiability of counsel but the
 21 very high professionalism of counsel, and that's been
 22 displayed every single day of this Inquiry.
 23 I learnt a little while ago that one should not use
 24 Latin, but insofar as there has been any bad temper on
 25 the part of the Commission from time to time, mea culpa,

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1 mea culpa, mea maxima culpa, and many thanks to you all.
2 It's been a pleasure. Thank you.
3 (6.03 pm)
4 (The hearing concluded)
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