

1 Monday, 3 June 2019

2 (10.01 am)

3 MR TSOI: May it please you, Chairman. May it please you,
4 Professor. May I now call Mr Cheung Yick Ming for Wing
5 & Kwong?

6 CHAIRMAN: Certainly.

7 MR CHEUNG YICK MING, BEN (affirmed in Cantonese)

8 Examination-in-chief by MR TSOI

9 MR TSOI: Mr Cheung, can you tell us your role in Wing
10 & Kwong?

11 A. Okay, 我個角色係負責一般有關於合約同埋measurement嘅工作, 亦都
12 關乎管理一啲喺地盤有關佢哋合約包同唔包以外嘅工作範圍等等。

13 Q. Over the weekend, on 1 June, were you served with the
14 latest witness statement from a Mr Jon Kitching from
15 Leighton?

16 A. 我有睇過, 我有睇到。

17 Q. Have you had a chance to read that?

18 A. 有, 我有讀過, 我有睇過。

19 Q. In light of reading that, can I now take you to your
20 witness statement, which we can find at page EE59. From
21 page EE61 onwards, I think you set out the various
22 contracts that you recall signing at the time?

23 A. 係。

24 Q. In light of reading Mr Jon Kitching's statement, have
25 you got anything to say about what you said in your

1 witness statement?

2 A. 有，我有，我可唔可以提供一啲文件㗎，而家喺度？因為我睇完咗

3 Jon Kitching嘅嗰個contract之後，我哋還原到件事究竟啲合約嗰個前後
4 次序，我可唔可以show一show我嘅文件㗎？

5 MR TSOI: If it pleases the Commission?

6 CHAIRMAN: Yes, certainly.

7 A. Okay, 我擺出嚟囉喎。

8 CHAIRMAN: What are the --

9 MR TSOI: If I can explain this way, Mr Chairman. As
10 Mr Pennicott raised in the opening, we hope this is not
11 an issue, because we do have two or three versions of
12 the Wing & Kwong and Leighton sub-contract. Mr Cheung
13 has of course provided information and his evidence in
14 the witness statement. The latest witness statement
15 from Jon Kitching last week was in relation to this
16 issue.

17 From my point of view, this is not an issue which
18 really concerns the Commission, but because we received
19 the witness statement from Mr Jon Kitching last week, it
20 may be that Mr Cheung has more explanation about this
21 issue.

22 Now, if the Commission tells me now that this is not
23 really an issue that needs to be resolved and there is
24 no need for evidence to be called for it, then I'm very
25 happy for Mr Cheung to explain it. But since the issue

1 has been raised -- I am really in your hands, Chairman.

2 CHAIRMAN: All right. Just remind the two of us, what is
3 the issue that you believe has been raised?

4 MR TSOI: Essentially, there are two versions of the
5 sub-contract, at least, because what happened was
6 Mr Cheung signed a version, provided it to Leighton, and
7 then that variation was lost, and then there was another
8 version that was again signed -- sorry, not by Mr Cheung
9 but signed by Wing & Kwong -- and now we have the final
10 version which has been produced by MTR.

11 But in terms of the toing and froing as to when who
12 signed the contract, that's not an issue for us, we now
13 have no issue with that and we don't see a problem with
14 it, because we accept that we did the rebar fixing work
15 anyway for the NAT. So I'm not sure if now any issue
16 arises as to who signed the contract when, and who had
17 a copy when.

18 CHAIRMAN: Perhaps, Mr Pennicott --

19 MR PENNICOTT: Yes.

20 COMMISSIONER HANSFORD: I agree. I was going to suggest the
21 same.

22 MR PENNICOTT: Sir, my understanding of the position, or
23 really the issue that may have been of some concern to
24 the Commission is that there was a suggestion in
25 Mr Cheung's witness statement that he had signed
26 a particular version of the sub-contract, sent it back

1 to Leighton, had not received a signed version back; at
2 a later point in time, chased Leighton for the contract;
3 at that point in time, the contract was sent back to
4 Wing & Kwong; it was signed and sent back to Leighton.

5 However, as I understood the evidence in Mr Cheung's
6 statement, it wasn't until requests were made for
7 witness statements in this Inquiry, and that second
8 contract was looked at in more detail, and at that point
9 it was realised that the two contracts were different in
10 terms of the amount of work and areas of work that the
11 contracts covered.

12 I think the inference that I think we were being
13 asked to draw was that somehow Leighton had sort of
14 slipped in the additional items of work. I don't know
15 whether that was the inference we were being asked to
16 draw, but that's the way I read it, that it was being
17 inferred -- one doesn't want to put it too highly -- but
18 somehow Leighton had slipped in this additional work in
19 the second version of the contract, without telling
20 Mr Cheung or Wing & Kwong; because, as I understood it,
21 Wing & Kwong accepted that so far as the NAT rebar
22 fixing was concerned, they did that work, but under
23 essentially a series of variations to the original
24 contract, not that that work was in the contract from
25 the outset.

26 Now, that seems to me to be where it lies, or did

1 lie, sorry, until we had Mr Kitching's witness statement
2 late last week. Mr Kitching now says, as I understand
3 it -- well, he doesn't accept that version of events.
4 What Mr Kitching said happened was that during the
5 tender process, a document known as tender addendum
6 no. 2 was issued on 20 October 2014, and we've got that
7 tender addendum no. 2. The following day, on
8 21 October, Wing & Kwong submitted a revised tender
9 against that tender addendum no. 2, and that tender
10 addendum no. 2 included all of the work, the HHS and the
11 NAT.

12 So there was no question of any variation at a later
13 date, and indeed the second version that Leighton sent
14 back, upon request, accurately reflected all the work
15 that was in tender addendum no. 2.

16 We don't have, as I understand it, the quotation of
17 21 October 2014. The inference is that we know it
18 exists because it's referred to in the letter of intent
19 that Leighton sent to Wing & Kwong on 28 November 2014.
20 So it starts off by saying, "This relates to your tender
21 dated 21 October 2014", but we don't have that tender,
22 as I understand it, unless Mr Cheung is about to produce
23 it. As I understand it, that's possibly the only
24 missing document, on my analysis, that we don't yet
25 have. I may be wrong.

26 But that's really where we are. At the end of the

1 day, it probably doesn't matter to the Commission as to
2 precisely what happened in terms of the toing and froing
3 of the tenders originally and then the contract
4 subsequently. Certainly, I suppose, just for peace of
5 mind, it would be nice to actually nail it and get it
6 agreed between Wing & Kwong and Leighton, so that there
7 is no disagreement between Mr Cheung on the one hand and
8 Mr Kitching on the other. Just for general peace of
9 mind perhaps, we could get it sorted out. But I don't
10 think it ultimately matters as to precisely what
11 happened.

12 CHAIRMAN: Can I ask Leighton's counsel -- sorry,
13 Mr Shieh -- do you intend to make an issue or debate the
14 issue of the terms of the sub-contracts? Do you
15 consider that to be relevant to what you wish to dealt
16 with in this tribunal?

17 MR SHIEH: It rather depends on what Wing & Kwong wishes to
18 make of it, because the issue first arose because
19 Mr Cheung, in his witness statement, raised the question
20 described by Mr Pennicott as to "different versions" of
21 the sub-contract between Leighton on the one hand and
22 Wing & Kwong on the other.

23 Leighton's version of the Wing & Kwong contract
24 contained 23 items, which included the NAT works.

25 CHAIRMAN: Yes.

26 MR SHIEH: Wing & Kwong, through Mr Cheung, produced

1 a version of the contract signed earlier on in 2015
2 which, according to Wing & Kwong, did not cover the NAT
3 works, and which covered actually a lesser number of
4 works, I think 13 items. And there were, as
5 Mr Pennicott suggested -- the language suggested or
6 insinuated that somehow Leighton had slipped in -- it
7 didn't say so explicitly but it may be implicitly --
8 that it was somehow wrong for Leighton to somehow sneak
9 in additional items of work subsequently.

10 Leighton, through Mr Kitching, produced documents
11 which, as Mr Pennicott said, showed Leighton's version
12 of events. Significantly, what Mr Pennicott has not
13 mentioned is that in Leighton's computer system, there
14 is actually a scanned version of a contract signed by
15 Wing & Kwong which contains the 23 items of work, which
16 included NAT, which on Leighton's case showed that there
17 is nothing illicit about it. The contract between Wing
18 & Kwong and Leighton had always contained 23 items,
19 which included the NAT works, and the version Mr Cheung
20 produced, we could only think, is only an earlier draft
21 of a contract which did not materialise into a signed
22 contract.

23 Now, all that would be by the by if Wing & Kwong
24 doesn't actually raise any issue or insinuation that
25 somehow we have illicitly slipped anything in, because,
26 as Mr Tsoi accepted, as a matter of fact Wing & Kwong

1 did perform the NAT works, albeit they say not according
2 to the contract but by way of separate instructions --
3 which is actually a very long way of saying it all
4 depends on what Mr Tsoi wishes to make of this point
5 concerning "two different versions" of contract, because
6 if it is suggested or if it is intended to invite the
7 Commission to make any comments or findings concerning
8 Leighton's conduct, then it would be something that
9 Leighton would wish to set the record straight.

10 CHAIRMAN: Mr Tsoi, what documents are going to be put
11 forward? Because Mr Pennicott has said and my
12 co-Commissioner indicates that often caution is the
13 better side of matters; we can sew it up.

14 MR TSOI: Perhaps I can make clear Wing & Kwong's situation.
15 We do not make any insinuation that there has been any
16 trickery of a sort, or slipping in a contract, because
17 what happens is -- if the Commission wants to heard
18 evidence from Mr Cheung, that's fine. His recollection
19 at the time he wrote the statement -- because he never
20 signed the contract, you see -- so his recollection was
21 that he saw two versions and he didn't know the first
22 version was not the same as the other one.

23 But having read Mr Jon Kitching's latest witness
24 statement, I think he realises that his recollection may
25 actually be mistaken. That's all. So there's no
26 insinuation whatsoever that --

1 CHAIRMAN: Mr Pennicott -- sorry to interrupt -- what was
2 the document that you said would be of benefit?

3 MR PENNICOTT: Sir, whether it's of benefit or not, I'm not
4 sure.

5 CHAIRMAN: Well, it would tie things up and help you.

6 MR PENNICOTT: It's the Wing & Kwong tender of 21 October
7 2014. That's the document that Leighton have not been
8 able to produce.

9 CHAIRMAN: Do we have that?

10 MR TSOI: I'm not too sure we have that.

11 CHAIRMAN: Perhaps the witness could be asked if he has
12 that.

13 A. 我哋好似有，喺witness statement裏面有，畀我少少時間，我嘅
14 witness statement裏面...

15 CHAIRMAN: All right. Among the papers you have with you,
16 do you have your tender of 21 October 2014?

17 A. Witness statement有。

18 MR TSOI: In the witness statement?

19 A. In the witness statement.

20 Q. Can you take us to it?

21 A. 我搵到喺witness statement裏面嘅EE180、EE181開始，至到EE228。

22 CHAIRMAN: Mr Pennicott, an initial reconnaissance suggests
23 what to you?

24 MR PENNICOTT: That it doesn't have a date on it.

25 A. 喺EE230裏面有個cover sheet嘅。

1 MR PENNICOTT: No. That is the point. We know there was
2 a tender of 26 September 2014. What I understand
3 Leighton to be saying -- and you will see, if you look
4 at EE230, that is a quotation or a tender in relation to
5 addendum no. 1. One picks that up from the title, the
6 caption. Do you see the "Addendum no. 1"?

7 CHAIRMAN: Yes.

8 MR PENNICOTT: I am bound to say, I had assumed that the
9 document at EE180 went with this letter, and that's the
10 tender of 26 September 2014.

11 My understanding of Mr Kitching's position is that
12 three or four weeks later, on 20 October 2014, Leighton
13 issued tender addendum no. 2, 20 October, and as
14 a consequence of which Wing & Kwong submitted a new or
15 fresh quotation or tender; because if you look at
16 CC11/6747, which are the new documents attached to
17 Mr Kitching's witness statement, or some of the
18 documents, this is the letter of intent that Leighton
19 wrote on 28 November 2014.

20 You can see in the first line:

21 "We refer to your quotation ref [given] addendum
22 no. 2 dated 21 October 2014 ..."

23 And Mr Kitching says in his latest witness statement
24 he has been unable to find that quotation. And that's a
25 small point, as I understand it.

26 So my understanding at the moment -- I'll be correct

1 me if I am wrong -- but the document that Mr Cheung has
2 referred us to at EE180 is the earlier quotation, not
3 the one of 21 October.

4 CHAIRMAN: All right. As interesting as this may be --

5 MR PENNICOTT: Yes, quite.

6 CHAIRMAN: -- Mr Tsoi indicates that as far as matters
7 before this tribunal are concerned, he doesn't intend to
8 seek to use any of the contractual documents for any
9 material purpose. Mr Shieh has already put the position
10 of Leighton. And, Mr Pennicott, you don't suggest that
11 it's critical that this matter be resolved first; in
12 short, that it's collateral to the issues that are
13 before this tribunal?

14 MR PENNICOTT: It is very much collateral, yes, sir.

15 CHAIRMAN: Good. If anything arises then we will deal with
16 it.

17 MR TSOI: Of course.

18 CHAIRMAN: And obviously anything -- the fact that we are
19 omitting it here by way of materiality doesn't mean that
20 it's not material in other tribunals at other times.

21 Good. Thank you.

22 MR TSOI: Of course. With that in mind, with the caveat
23 that paragraphs 9 to 30 of your witness statement talk
24 about the contracts, excluding that part, excluding that
25 part, do you wish to adopt the witness statement as your
26 witness statement before the Commission today?

1 A. 係。

2 Q. Have you ever testified in a court before?

3 A. 冇，之前法庭冇。

4 Q. Other counsel will now ask you questions, so just try
5 your best to answer them; all right?

6 A. 唔。

7 Examination by MR PENNICOTT

8 MR PENNICOTT: Mr Cheung, good morning.

9 A. Good morning.

10 Q. My name is Ian Pennicott, I'm one of the counsel to the
11 Commission. I'm going to ask you a few questions first,
12 and then some of the other counsel behind me may take
13 the opportunity of asking you some questions as well,
14 and then when that's finished Mr Tsoi will also have the
15 opportunity to ask you any further questions he wishes
16 to do so.

17 At any time during the process, the Chairman or the
18 Commissioner may also ask you some questions.

19 A. Okay.

20 Q. Unfortunately, in a moment, Mr Cheung, but for
21 a slightly different purpose, we will need to look at at
22 least some of the chronology of your quotations and your
23 tenders, but for a different purpose, but at least it
24 might help to clarify what actually happened.

25 First of all, however, Mr Cheung, can I ask you
26 this: are you actually -- you describe yourself as

1 a "quantity surveyor manager of Wing & Kwong". Are you
2 a qualified quantity surveyor?

3 A. 唔係。

4 Q. Do you have any professional qualifications?

5 A. 冇。

6 COMMISSIONER HANSFORD: Mr Cheung, you might find it more
7 comfortable if you put the headphones on properly, but
8 that's entirely up to you.

9 WITNESS: Okay.

10 MR PENNICOTT: As I understand it, Mr Cheung, during the
11 course of the project that we are concerned with, you
12 were office-based and you were not involved in the site
13 work; is that right?

14 A. 係，冇關乎有關工程，冇參與，除咗佢哋叫我係人數上嘅啫。

15 Q. When you say not involved in site works, apart from
16 matters such as labour, what do you mean by that?

17 A. 即係佢可能冇時唔夠人，就會通知我加人、減人咁嘅意思。

18 Q. Right. Did you have occasion to visit the site at all
19 during the course of the works, Wing & Kwong works?

20 A. 有，絕對有。

21 Q. How often would you do that?

22 A. 一個月或者一個月左右。

23 Q. Sorry, once every month?

24 A. 係。

25 Q. Okay. Was that for any particular purpose?

1 A. 係，因為上糧單，上中期糧，interim payment。

2 Q. Right. What, delivering interim payment applications to
3 Leighton?

4 A. 通常都係會之前有人交咗，我係落去再同佢哋傾下究竟每期糧嘅銀碼。

5 Q. Yes, I see. So you were interested in payment?

6 A. Yes.

7 Q. And that was your primary reason for visiting the site?
8 Presumably that was visiting, what, Leighton's site
9 office?

10 A. 係，冇錯。

11 Q. And when you were there, did you go out on site and look
12 at the works going on, or did you just go to the site
13 office?

14 A. 有時去之前，未開會之前我都會行個圈。

15 Q. Right.

16 As I understand it, you relied very much upon Mr Ng,
17 or Ah Chun, the foreman, the supervisor who we've heard
18 from already, in relation to the works that were being
19 carried out by Wing & Kwong; is that right?

20 A. 係，冇錯。

21 Q. I think you had done a small number of previous -- I say
22 "you" -- Wing & Kwong had done a small number of
23 previous sub-contracts for Leighton; is that right?

24 A. 我哋之前有同禮頓做其他合約嘅，係。

25 Q. Because you helpfully give us -- we can look at EE1/94

1 to 96 a list of projects with which Wing & Kwong was
2 involved, and if you look at EE95, the second punch hole
3 down, approximately, we can see "Leighton Contractors
4 (Asia) Ltd" appearing there, and then towards the bottom
5 of that page, "Leighton Contractors (Asia) Ltd" there as
6 well. Then over the page, at E96, there's one more
7 "Leighton Contractors" just over halfway down, and also
8 a Leighton-John Holland Joint Venture.

9 So about four projects you'd had previous
10 involvement with with Leighton?

11 A. 係，冇錯。

12 Q. As I understand it, the owner of Wing & Kwong is
13 a gentleman called Joe Leung; is that correct?

14 A. Joe Leung, yes, Joe Leung。

15 Q. Do you know Mr Leung very well?

16 A. 係，yes。

17 Q. What happened was that a company called Loyal Ease was
18 set up -- we'll look at that in a moment -- and Loyal
19 Ease is, as we understand it, owned by a gentleman
20 called Chan Siu Wing. Are you aware of that?

21 A. 我知。

22 Q. Do you know Mr Chan?

23 A. 唔識。

24 Q. Right. You've never met him?

25 A. 未，未見過。

1 Q. Okay. Do you know whether he's an acquaintance/friend
2 of Joe Leung?

3 A. 識嘅，一定識，熟唔熟唔知。

4 Q. All right.

5 As a matter of chronology, Mr Cheung -- and frankly,
6 because we've just looked at some of the documents,
7 I might be able to do this a bit more quickly -- we know
8 you put in a quotation for the works on 26 September
9 2014. Do you recall?

10 A. 記得。

11 Q. Just for the transcript, that's EE1/230.

12 Then, Mr Cheung, I think you now accept that on
13 20 October, Leighton issued tender addendum no. 2, and
14 that you provided another quote on the following day,
15 21 October 2014, against tender addendum no. 2. I think
16 you accept that now. Is that right?

17 A. 附錄2，可唔可以再重複多一次？唔該。

18 Q. Yes. On 20 October 2014, Mr Kitching has told us and
19 has produced a document called tender addendum no. 2
20 that Leighton issued on that date, and on the following
21 day, 21 October 2014, you provided a fresh quote or
22 tender against tender addendum no. 2 and, as
23 I understand it, you now agree that?

24 A. 同意。

25 Q. Right. Now, on 10 November 2014, so just a few weeks

1 later, a couple of weeks later, Loyal Ease was
2 incorporated. Were you aware of that?

3 A. 唔知道。

4 Q. Okay. What subsequently happened was that Wing & Kwong
5 sub-contracted, as I understand it, with Wing & Kwong?

6 COMMISSIONER HANSFORD: Sorry --

7 MR PENNICOTT: Sorry, with Loyal Ease; yes?

8 A. 喺嗰個文件上，係，係。

9 Q. However, that sub-contract is dated 1 September 2015.
10 Have you seen this sub-contract, Mr --

11 A. 我有睇過，有。

12 Q. Were you involved in any way with the negotiation of
13 that sub-contract between Wing & Kwong and Loyal Ease?

14 A. 冇，呢一份--呢一part唔係我工作。

15 Q. Could I ask you, please, to look at the Chinese version
16 of that sub-contract. It's at page EE401. If you've
17 got tabs numbers, it's 15.

18 Do you know who the signatories are of this
19 sub-contract, Mr Cheung?

20 A. 唔知道。

21 Q. So were you wholly unaware of the existence of this
22 sub-contract?

23 A. 唔係，我知道有。

24 Q. When did you get to know about it?

25 A. 2016年。

1 Q. Right. So it was entered to, we can see, on 1 September
2 2015, but you didn't know about it at that time? It was
3 later in time, was it, that you came to know about it?

4 A. 係，冇錯，即係呢份合約我見到嘅--第一次見嘅就係2016年。

5 Q. Right. Can I ask you to look at the part that's headed,
6 "Payment method"; do you see that? If you look at the
7 Chinese --

8 A. 睇到。

9 Q. -- version; I'll be looking at the English version. It
10 says:

11 "Payment request is made once a month, payable
12 within 7 days thereafter. To ensure that the
13 sub-contractor [which would be Loyal Ease] pays its
14 employees' MPF, sub-contractor needs to report the
15 number of workers to the contractor daily."

16 And so forth. Now, Ah Chun told us that he reported
17 those details to you. Is that correct?

18 A. 啱，正確。

19 Q. Okay. And he would do that, I think, by sending you
20 a photograph of the signatures on a particular page,
21 recording the workers that were on the site on any given
22 day. Is that your recollection of broadly how it
23 happened?

24 A. 係咁樣發生。

25 Q. Okay.

1 I think it follows from what you've just told us,
2 Mr Cheung -- you don't know whether that sub-contract
3 was intended to, as it were, operate from 1 September
4 2015 onwards, or whether it was intended to have any
5 retrospective effect? Presumably you just don't know?

6 A. 我唔係好明你個問題。

7 Q. Well, the sub-contract is entered into -- we've seen the
8 tender of Wing & Kwong was accepted in November 2014.

9 A. 係。

10 Q. We know, from documents that we've been looking at so
11 far in the Inquiry, that in the HHS Sidings area, the
12 works started at the end of 2014/the beginning of 2015;
13 yes?

14 A. Yes, 係。

15 Q. So, by the time this sub-contract, sub-sub-contract,
16 that we've been looking at has been entered into, the
17 works have been going on, the Wing & Kwong works have
18 been going on, for some nine months or so; do you
19 follow?

20 A. 跟到, 係做咗九個月, 明白。

21 Q. My question is whether you had any knowledge as to
22 whether this sub-sub-contract was intended just to take
23 effect from 1 September going forward or whether there
24 was any intention for that sub-contract to have
25 retrospective effect for the work that had already been

1 done.

2 A. 唔係，唔係咁樣。

3 Q. Right. So it was intended to start on 1 September going
4 forward?

5 A. 係，冇錯。

6 Q. Right. I now just want to ask you a few questions,
7 Mr Cheung, about what happened when certain problems
8 were discovered with the stitch joints because, as
9 I understand it, you have no direct knowledge of the
10 details of how the original stitch joints were
11 constructed by Wing & Kwong/Loyal Ease in January 2015
12 and July -- sorry, January 2017 and July 2017.

13 That's right, isn't it? You simply were not there
14 at the time, and all the knowledge that you have about
15 the construction of those original stitch joints came
16 from Mr Ng or Ah Chun?

17 A. 冇錯。

18 Q. However, as I understand it, Mr Cheung, on 7 February
19 2018, you received a WhatsApp message from somebody
20 called Ah Wai -- that's W-A-I -- of Leighton, attaching
21 a photograph; is that right?

22 A. Yes, correct. 係。

23 Q. If we look at EE1/269, as I understand it, this is the
24 message. We can see at the top it says, "7 February
25 2018", and this is the photograph that you were sent on

1 that --

2 A. I received.

3 Q. That you received?

4 A. 有，I received。

5 Q. Received it. On that date?

6 A. Mm-hmm.

7 Q. You say that you don't know the full name of Ah Wai. Is
8 that still the case?

9 A. Yes, I don't know his full name.

10 Q. Okay. What that photograph appears to show is, do you
11 agree, a threaded rebar not connected into a coupler?

12 A. Yes，喺呢張相--睇呢張相，係。

13 Q. But, as I understand it, you say you were not given any
14 information as to when -- sorry, where precisely this
15 photograph was taken?

16 A. 唔，冇。

17 Q. In any event, you were asked to attend a meeting with
18 Leighton on the following day, 8 February; is that
19 right?

20 A. 唔，正確。

21 Q. You went to that meeting. It was at about 11 o'clock,
22 you tell us, and Ah Wai was there, with a female
23 engineer; is that right?

24 A. Yes, correct.

25 Q. And you don't know the name of the female engineer?

1 A. I don't know.

2 Q. Could it have been Regina Wong?

3 A. I really forget. I don't know. Sorry.

4 Q. You don't know, okay. Right. And what did they tell
5 you at that meeting, Mr Cheung? What's your
6 recollection of what they told you?

7 A. 佢哋話畀我聽有地方漏水，個漏水原因佢哋鑿開咗一個小範圍，就畀咗張相我
8 睇，同埋畀咗幾張圖我睇，就話佢哋發現有啲coupler就係冇連接到嘅，佢哋
9 話畀我聽咁嘅事。

10 Q. Right. If we just pick this up in your witness
11 statement -- this is paragraph 54 at EE77 -- you say
12 Leighton, which is at this meeting:

13 "... Leighton showed me some site drawings and
14 photos and told me that because of the water leakages at
15 the stitch joints at NAT, they chipped off some of the
16 concrete at the NAT and found that some of the threaded
17 rebars were not connected to the couplers. They then
18 told me that rectification works would likely have to be
19 carried out and that they would try to chip away the
20 concrete at the joints over the Lunar New Year to
21 further ascertain the situation before deciding how
22 rectification works should be done."

23 Do you recall how many photographs they had at this
24 stage that they showed you?

25 A. 唔記得。

1 Q. Do you recall whether the photographs just showed
2 incidence of seepage, or were there more photographs of
3 not connected or unconnected rebar?

4 A. 唔記得，唔記得佢當時畀嗰張相係點，但係有呢一張。

5 Q. All right.

6 Now, you tell us immediately after that meeting you
7 phoned Ah Chun; is that right?

8 A. Yes.

9 Q. You tell us what he told you, and you set it out in
10 paragraph 58 of your witness statement; is that right?

11 A. Yes.

12 Q. And, as I understand it, you didn't do anything about
13 that, in terms of writing to Leighton, because the next
14 thing that happened, four days later, was that you
15 received Leighton's letter of 12 February 2018, which we
16 can see at page 274. Is that right? I'm so sorry, 271.
17 My fault.

18 A. Yes.

19 Q. And that letter came with some photographs. Were
20 these -- there's four photographs -- are these the same
21 photographs that you were shown at the meeting on the
22 8th, or just a selection of them?

23 A. I cannot remember. I cannot remember is it shown on
24 the meeting or not.

25 Q. Okay. I asked that because we can see that the
26 photographs, at least two of them, appear to have been

1 taken on 7 February. All right.

2 Then what Mr Kitching in that letter is saying is --
3 he's drawing your attention to the fact that water leaks
4 and structural cracking have been discovered; that
5 investigations are currently underway, and he says:

6 "Please be advised that should the cause of the
7 water leaks and cracks be due to defective work
8 undertaken or the materials supplied by your company, we
9 will seek to recover all costs incurred in accordance
10 with the terms of the sub-contract."

11 Do you see that, Mr Cheung? Do you see that?

12 A. See that, yes.

13 Q. Your response to that letter is at EE277. I'm not going
14 through all this correspondence; just a couple of
15 letters, that's all, Mr Cheung. Others may wish to take
16 you to more.

17 First of all, one notes that this letter is actually
18 signed by and appears to have been put together by
19 somebody called Tommy Chan?

20 A. Yes.

21 Q. He's described as a senior quantity surveyor?

22 A. Mmm.

23 COMMISSIONER HANSFORD: Sorry, is this 26 February?

24 MR PENNICOTT: 23 February, EE277.

25 COMMISSIONER HANSFORD: Yes.

26 MR PENNICOTT: Why did -- you instructed Mr Chan to write

1 this letter?

2 A. Yes.

3 Q. Why did it come from him and not from you?

4 A. 因為其實日常好多信件我都係會draft咗，畀佢去打，畀佢睇，畀佢--再畀番
5 我睇，因為我哋咁樣可以大家可以cross check究竟有冇打錯字、睇錯，所以
6 我多數都係我自己draft完，我就會畀佢打，畀佢簽埋，畀佢睇埋咁樣。

7 Q. Right. But you are more senior to Mr Chan; is that
8 right?

9 A. Yes, 係。

10 Q. And you would have the conversations with or
11 a conversation in a meeting with Leighton.

12 A. Mmm.

13 Q. I'm just a bit puzzled as to why you didn't write it
14 personally. I mean, Mr Chan could have checked it for
15 you, and the same process could have taken place. The
16 letter could have come from you. I'm just puzzled why
17 you didn't think it appropriate to send it yourself.

18 A. 當時冇諗過呢樣嘢。

19 Q. All right. Anyway, you say in this letter -- you refer
20 to Mr Kitching's letter of 12 February. You believe
21 that Wing & Kwong is not the party that has caused the
22 defective work. Then you say this:

23 "To avoid the possibility of any instability, our
24 site supervisor, Mr Ng Man Chun, had deliberated the
25 particulars of the relevant location with your engineer,

1 Mr Henry Lai, five months before the start of the work."

2 Can you explain your reference to deliberation five
3 months before the start of the work?

4 A. 點解我會寫五個月之前呢？就係因為我記得啲coupler--訂coupler嗰個
5 日子係喺五個月之前嘅，所以Henry Lai同阿俊有關於呢個位置之前應該
6 係喺五個月之前有溝通過嗰個coupler，佢哋會訂coupler先㗎嘛。

7 Q. Right. But --

8 COMMISSIONER HANSFORD: Sorry, do you mean the couplers or
9 the threaded bars?

10 A. 絞牙，threaded bar，yes。

11 COMMISSIONER HANSFORD: Okay. That makes sense.

12 MR PENNICOTT: And one has to remember the context of this
13 correspondence is that the location, as I understand it,
14 where the discovery of seepage and cracks has been made
15 is at what we are calling joint 1; that is, the
16 1111/1112 NSL stitch joint.

17 A. At the time?

18 Q. At the time.

19 A. No.

20 Q. This is what this correspondence is about, is it not?

21 A. Sorry?

22 Q. At this time -- sorry, let's wind the clock back. Back
23 at the 7 and 8 February, the time you got your WhatsApp
24 and the time you had the meeting, the discovery had been
25 made at the 1111/1112 stitch joint. That was the first

1 problem that was identified. Is that right?

2 A. 當時冇咁講得清楚究竟係邊一個實際位置，淨係講個stitch joint，但係
3 當時冇講exactly嘅位置喺邊度。

4 Q. Right. We'll clarify that in a moment.

5 A. Mmm.

6 Q. By the time of this letter, of the 23rd, were you aware
7 of there being more than one location where a problem
8 had been discovered?

9 A. 冇，冇為意。

10 Q. Right. When this correspondence kicked off and when you
11 wrote this letter, was it your understanding that it was
12 just one location, a number of locations, or did you not
13 know?

14 A. 我哋唔知道實際有幾多個位置或者幾多個location。

15 Q. All right. It is right to say that it does refer to the
16 NSL and EWL stitch joints, both joints, but let's just
17 see how this pans out.

18 Can we just go back to the answer you gave to
19 Prof Hansford a moment ago. You say that Ah Chun had
20 told you he had had a conversation with Henry Lai
21 regarding the ordering of threaded rebar five months
22 before when?

23 CHAIRMAN: I have a sudden silence.

24 MR PENNICOTT: So do I, but I think the witness is just
25 thinking.

1 A. Five months before start the work.

2 Q. Start of what work?

3 A. Stitching joint.

4 Q. This is one of the problems, Mr Cheung. We now know
5 that -- let's forget about the shunt neck; let's park
6 that on one side for the moment. It's a complication.
7 We know that the EWL stitch joint was constructed in
8 January/February 2017; okay?

9 A. (Nodded head). 唔係，因為點解會咁講呢？因為當時我係睇番佢哋嗰啲
10 coupler嘅threading紀錄，我就搵到一啲NAT咁嘅位置。

11 Q. We also know -- this is the reason why I'm trying to get
12 some clarification -- that the joints 1 and 3, that is
13 the NSL 1111/1112 interface stitch joint and the
14 internal stitch joint on the 1112 contract, were
15 constructed in July, essentially, 2017?

16 MR SHIEH: Joints 1 and 2, not 1 and 3.

17 MR PENNICOTT: Sorry, 1 and 3.

18 MR SHIEH: Internal is not 3.

19 MR PENNICOTT: No, it's 2. I was right in the first place.

20 So there's a six- or seven-month gap between the
21 construction of the EWL stitch joint and the other two
22 NSL stitch joints; all right? And I'm just trying to
23 understand what your reference is to five months before.

24 A. 因為我嗰個coupler嘅絞牙公司會離場，所以佢哋好似係提早啲佢離場之前
25 絞晒啲牙嘅，所以我大概記得係五個月之前。

1 Q. I don't understand that answer, Mr Cheung. Five months
2 before when?

3 A. 嗰陣時我係寫係five months before嗰個stitching joint開始，
4 7月之前，即是2月。

5 Q. Right. So you are referring, I think, therefore, to
6 a conversation which you say took place -- you must have
7 been informed about this by Mr Ng -- in February 2017?

8 A. 可唔可以再講多一次？

9 Q. So you are referring to a conversation between Mr Ng and
10 Mr Lai in February 2017; is that right?

11 A. 係refer to，係，冇錯。

12 Q. Mr Cheung, one of the problems that I have, and perhaps
13 others have as well, is that if you look at paragraph 58
14 of your witness statement, where you set out quite
15 extensively -- that's at EE78, I'm sorry.

16 A. 呢張係咪EE78？

17 Q. You set out there, in a number of subparagraphs, some
18 quite extensive detail of your recollection of the
19 conversation that you had with Mr Chun --

20 MR SHIEH: Ah Chun.

21 MR PENNICOTT: -- Mr Ng, Ah Chun, after the meeting you had
22 with Leighton, and I cannot see -- whilst there's a lot
23 of detail here, I cannot see any reference to
24 a conversation having taken place five months before.

25 All this is related to conversations alleged to have

1 taken place during the course of the works when problems
2 were, according to Mr Ng, discovered. There's no
3 reference to a conversation five months before. Do you
4 follow?

5 A. 哦，明白。

6 Q. So why is that? Where does the five months reference
7 come from?

8 A. 畀我再睇多一次個statement。我唔記得當時係點樣嚟個個five months
9 嘅reference，但係個five months當時係講個個絞牙廠離開地盤，所以
10 就有個個five months出現，因為佢離開地盤之前佢要絞晒啲牙先嘍嘛。

11 Q. But the only threaded bar that Wing & Kwong would have
12 been interested in is the carrying out of their own
13 rebar work for Leighton, in the stitch joint or their
14 general rebar work. I'm afraid I just can't understand
15 the time point, I'm afraid, Mr Cheung, but there we are.
16 Maybe others will take it up.

17 All right. Can we just go back to the
18 correspondence, just a couple of other letters. If we
19 go, please, to EE285.

20 A. Okay.

21 Q. You had an email on the same date of your letter,
22 23 February 2018; do you see that?

23 A. Mmm.

24 Q. And it is attaching what we see at page 286,
25 a sub-contractor backcharge notice; do you see that?

1 A. Yes.

2 Q. If you look at "Part A" at the top, where it says
3 "Sub-contract works" -- this is the point I was on just
4 a moment ago -- it says, "Remedial works for NAT NSL
5 stitch joint further to [NCR95]". I have shortened
6 that. Do you see that?

7 A. Mmm.

8 Q. My understanding is that backcharge came with, was sent
9 with, NCR95; is that right?

10 A. Yes, correct.

11 Q. We find that at page 82. Now, this is the NCR that MTR
12 had sent to Leighton and Leighton were now sending to
13 you; do you see that?

14 A. 見到。

15 Q. It relates to the interface stitch joints at the EW and
16 NSL; do you see that?

17 A. Yes.

18 Q. And it's dated 9 February; do you see that?

19 A. Yes.

20 Q. So the day after you had had your meetings with
21 Leighton, and it says:

22 "Details of non-conformance:

23 Water leakage and cracks were found at EWL and NSL
24 stitch joints ... interface. No coupling of rebar was
25 identified at the connection. (See attached photos and
26 plans)."

1 We don't need to worry about the rest.

2 As I understand it, Mr Cheung, you were not sent the
3 photographs and plans at the time?

4 A. No.

5 Q. We pick that up at page -- your response to that, on
6 26 February, at 290, EE290, where you say:

7 "Firstly, we are strongly not agreed ..."

8 Have you got 290 there?

9 A. Yes, reading.

10 Q. "... your backcharge notice ..."

11 Then you give details.

12 "... also, your backcharge notice is missing the ...
13 attached photos and plans so please resend all the
14 record with photos within 2 days from this letter date."

15 Did Leighton do that?

16 A. No.

17 Q. Then, further down, you say:

18 "The first schedule of construction of stitch joint
19 was end of December 2016 but due to some reason it was
20 rescheduled to start on early of 2017 but finally it was
21 started in July 2017. Finally, our staff was informed
22 to complete the base slab, wall and top slab of the
23 tunnel in three weeks in July 2017."

24 Then you say this:

25 "To avoid the possibility of any instability, our
26 site supervisor, Mr Ng, had deliberated the

1 particulars" -- we've heard these words before -- "of
2 the relevant location with your engineer, Mr Henry Lai,
3 seven months before the start of the work."

4 So the position has now shifted from five months to
5 seven months. Can you explain that?

6 A. 可能係--我都唔記得咗點解係五同七，我唔係好記得當時點解會打到咁樣，
7 但係七個月嘅原因就係因為原本開始係2016年12月，最遲變咗係2017年嘅
8 7月，所以我覺得佢哋係喺2016年12月嘅時候已經係傾過。

9 Q. All right.

10 Just to finish this, Mr Cheung, with regard to the
11 correspondence we've looked at and the other
12 correspondence that continues, you were, I think -- and
13 you agree with this, I believe -- writing to Leighton on
14 the basis of information that Mr Ng, Ah Chun, had given
15 to you?

16 A. Yes.

17 Q. All right. Without going to the detail of the letters,
18 you requested on a number of occasions, I think, to have
19 a joint inspection?

20 A. 係。

21 Q. And, as I understand it, that did not happen?

22 A. 冇。

23 MR PENNICOTT: Okay. All right. Thank you very much,
24 Mr Cheung.

25 Sir, I have no further questions.

1 Cross-examination by MR SHIEH

2 MR SHIEH: I think I'm next.

3 Good morning, Mr Cheung.

4 A. 你好。

5 Q. I represent Leighton and I have a few questions for you.

6 A. 好。

7 Q. First of all, you heard about the sub-contract between
8 Wing & Kwong and Loyal Ease in this case. You've looked
9 at it this morning, the Chinese version; do you remember
10 that?

11 A. 記得。

12 Q. To the best of your recollection and knowledge, is this
13 the first contract entered into between Wing & Kwong, on
14 the one hand, and Loyal Ease on the other?

15 A. 你嘅意思係呢個地盤嘅第一份合約?

16 Q. Ever, not just for this construction site, not just for
17 this site.

18 A. 唔係, Loyal Ease同永光有其他合約嘅, 有其實合約嘅。

19 Q. Can you look at AA1, page 180. This is the certificate
20 of incorporation of Loyal Ease, and if you scroll down,
21 it is dated 10 November 2014. Do you see that?

22 A. 係, 見到。

23 Q. Can you look at CC11, page 6747. This is a letter from
24 Leighton, dated 28 November 2014, and it referred to --
25 it's a letter addressed to you, do you see, "Attention

1 Ben Cheung"?

2 A. Mm-hmm.

3 Q. "We refer to your quotation ... addendum no. 2 dated
4 21 October 2014 for the reinforcement bar cutting ...
5 and are pleased to confirm our intention to enter into
6 a formal sub-contract with yourselves ..."

7 Do you see that?

8 A. Yes.

9 Q. It's not a memory test but does this letter trigger your
10 memory that you did actually receive this letter?

11 A. Yes.

12 Q. And it shows that Leighton basically awarded the
13 sub-contract to Wing & Kwong on 28 November; correct?

14 A. 因為佢呢封信有時會做做下先出，有時--即係我唔可以話佢嗰日就係award
15 嗰日，因為佢唔係真係嗰日就係嗰日嚟嘅，即係佢可能之前或者之後，可能
16 開咗工咁，我唔清楚，唔記得呢個。

17 Q. So sometimes -- are you suggesting that sometimes Wing
18 & Kwong would actually know that it had already won
19 a sub-contract before a letter like this was sent by
20 Leighton?

21 A. Mmm.

22 Q. The transcript came out "mmm". I think you need to
23 actually speak out and actually answer whether you agree
24 or "yes", because we've had experience previously where
25 "mmm" caused all kinds of trouble?

1 A. Okay, sorry, 好, okay。

2 Q. So you have to say "yes", you agree.

3 A. 再講多一次個問題, 好唔好呀?

4 Q. Are you suggesting that sometimes Wing & Kwong would
5 actually know that it won a sub-contract before a formal
6 letter like this was sent by Leighton?

7 A. Before, yes, maybe.

8 Q. Thank you. So bearing in mind the proximity of the date
9 of this letter and the incorporation of Loyal Ease that
10 we have seen, is it possible that Loyal Ease was
11 incorporated for the purpose specifically of performing
12 this contract?

13 A. 唔係。

14 Q. But why are you able to say no so definitively?

15 A. 因為喺--當我哋地盤開始嘅時候, 由正如頭先講2014年11月至到2015年9月
16 之前呢個期間唔係Loyal Ease嘅, 嗰陣時唔係Loyal Ease嘅出糧, 係另一
17 間公司洪記(譯音), 所以當時呢個公司成立唔係呢個purpose嘅。

18 Q. When you say between November 2014 and September 2015 it
19 wasn't Loyal Ease, it was a different company, did you
20 actually name that other company?

21 A. 嗰陣時係洪記嘅。

22 Q. You mean Wing & Kwong sub-contracted to Hung Kee for the
23 period November 2014 to September 2015, and then from
24 September 2015 onwards it became Loyal Ease?

25 A. 係。

1 Q. Can you look at AA1, page 163. This is the annual
2 return in the Companies Registry of Wing & Kwong; do you
3 see that?

4 A. 係。

5 Q. Move down to the bottom. The presentor, on the
6 left-hand side, is a corporate advisory services limited
7 called PA Corporate Advisory Services Ltd; do you see
8 that?

9 A. 係。

10 Q. With a certain address, and the file reference, I think,
11 for the presentor, is WKS-006; do you see that?

12 A. 係。

13 Q. Can I ask you then to turn to AA1, page 172. This is
14 the annual return of Loyal Ease at the Companies
15 Registry, and if you scroll down to the bottom of the
16 page, you see the presentor --

17 A. 係。

18 Q. Also PA Corporate Advisory Services Ltd, and the file
19 reference is WKS-003; do you see that?

20 A. 係，見到。

21 Q. Are you aware of any common management or common control
22 between Loyal Ease and Wing & Kwong?

23 A. 有，係。

24 Q. So you say there was actually common control or
25 management between these two companies?

1 A. 係。

2 Q. What was that common control or management?

3 A. 不如我解釋一下究竟輝宜係一間咩嘢公司，咁可能會仲清楚，可唔可以？我由...

4 Q. Yes. Mr Cheung, sometimes you see a dead silence on my
5 part. It's not because I couldn't hear you, but I want
6 to make sure that the transcript actually has completed
7 typing out your answers in translated English.

8 So, yes, please go ahead to give your explanation.

9 A. 其實輝宜係一間我哋負責啲工人出糧--即係輝宜嘅成立其實係因為好多工人
10 喺地盤工作嘅時候，佢哋會返兩日、休一日或者好短時間就會因為地盤嘅進度
11 要休息嘅，有時係佢自己甚至佢哋唔返工，喺呢個情況之下，佢哋會去追討
12 我哋啲代通知金或者一啲遣散費，我哋為咗避免呢啲情況發生，我哋就開咗
13 一間輝宜公司去幫永光去代處理呢啲咁嘅事項，就係咁嘅情況。

14 Q. I understand. So, basically, it is an entity -- I'm not
15 suggesting anything illegitimate or unlawful or
16 sinister, but basically it is a vehicle used to insulate
17 Wing & Kwong from any trouble caused by employment
18 disputes with the workers?

19 A. 係。

20 Q. I understand now. Thank you. In fact, when we heard
21 evidence from Ah Chun, Ah Chun said he had actually
22 worked for Wing & Kwong for a number of years, and then
23 he was asked by you to switch employment from Wing
24 & Kwong to Loyal Ease. Does that accord with your
25 recollection?

1 A. He asked me?

2 Q. You asked him.

3 A. I didn't ask him.

4 Q. Oh. Perhaps I will just ask one more question before we
5 leave this topic, because I don't want to spend too much
6 time on it. I've got the big picture.

7 Do you accept that Ah Chun used to work as
8 an employee of Wing & Kwong?

9 A. 阿俊係代表Wing & Kwong。

10 MR PENNICOTT: That wasn't the question.

11 MR SHIEH: No, I mean was Ah Chun employed by Wing & Kwong
12 in the past, at some stage?

13 A. 之前呀，你意思係咪？有。

14 Q. How did he change from being an employee of Wing & Kwong
15 to being an employee of Loyal Ease?

16 A. 其實佢哋當佢哋轉地盤嘅時候就會發生，即係好似佢哋由一個地盤做完去另一個
17 新地盤開始嘅時候就會。

18 Q. I understand. So it is not as if the workers would say,
19 "I quit this company, let me go and find a job; oh,
20 there's this company called Loyal Ease, let me join it"?
21 It is not like that?

22 A. (Shook head).

23 Q. I think you have to speak up; you just shook your head.

24 A. No, no.

25 Q. So changing employer is really a matter of paperwork

1 behind the scenes, like asking them to sign a contract
2 with, say, a different employer?

3 A. (Nodded head).

4 Q. I think you have to actually speak up; you can't just
5 nod your head.

6 You agree with that? It's just a paper --

7 A. 再重複一次個問題。

8 Q. So changing an employer, in the situation you have just
9 described, is really a matter of paperwork behind the
10 scenes; right? You change to a new construction site,
11 workers were given a new contract with a new employer,
12 and they just signed it and it would mean from then
13 onwards they are employed by a new employer? It's
14 really just like that; right?

15 A. 係,冇錯。

16 Q. Thank you. I think I can now move on quickly to the
17 position about --

18 MR PENNICOTT: Coffee?

19 MR SHIEH: Yes. Since it is a new topic, can I just see
20 whether or not it will be an appropriate moment? I am
21 moving on --

22 CHAIRMAN: If you are happy with that.

23 MR SHIEH: Certainly.

24 CHAIRMAN: Good.

25 How are we progressing?

26 MR SHIEH: Very well. I think I will be another

1 15-20 minutes.

2 CHAIRMAN: All right. Quarter of an hour.

3 Sorry, you are in the middle of giving your
4 evidence.

5 WITNESS: Yes.

6 CHAIRMAN: And when you are still giving your evidence, you
7 are not allowed to discuss it with any other person.

8 You understand?

9 WITNESS: Okay.

10 CHAIRMAN: So you can't go outside and meet a friend and say
11 "How am I doing", and, "What should I do?"

12 WITNESS: I need to stay here or I can go?

13 CHAIRMAN: No, you can go, you can talk about other matters,
14 you can talk about the sadness that happened to
15 Tottenham Hotspur in losing the football match --

16 WITNESS: I am a Manchester United!

17 CHAIRMAN: -- but you may not talk about this. Thank you.

18 (11.28 am)

19 (A short adjournment)

20 (11.49 am)

21 MR SHIEH: Mr Cheung, can I trouble you to look at
22 bundle CC2, page 876.

23 This is part of the sub-contract between Leighton
24 and Wing & Kwong.

25 Look at clause 2.6:

26 "The Sub-Contractor [this is Wing & Kwong] shall not

1 assign the whole or any part of the benefit of this
2 Sub-Contract nor shall the Sub-Contractor sub-contract
3 the whole or any part of the Sub-Contract Works without
4 the prior written content of the Contractor."

5 I want to ask you: Wing & Kwong never informed
6 Leighton about its sub-contract with Loyal Ease;
7 correct?

8 A. Inform係咩嘢形式嘅inform呢，你嘅意思係？

9 Q. Wing & Kwong never obtained Leighton's written consent
10 for its sub-contract to Loyal Ease?

11 A. 冇，冇。

12 Q. Wing & Kwong never obtained Leighton's written consent
13 for its sub-contract to Hung Kee?

14 A. 冇。

15 Q. Look at clause 9.3 at page 881. Clause 9.3:

16 "The Contractor shall have the power to direct in
17 writing the Sub-Contractor to alter or change the
18 method, manner and sequence of performance of the
19 Sub-Contract Works."

20 Do you see that?

21 A. Mmm.

22 Q. Also look at clause 10.1(c):

23 "The Sub-Contractor shall make such variations of
24 the Sub-Contract Works, whether by way of addition,
25 modification or omission, as may be", then (c):

26 "ordered in writing by the Contractor."

1 Do you see that?

2 A. Mmm.

3 Q. Now, it is your evidence that in February 2018, Ah Chun
4 told you that he was instructed by Henry Lai to screw in
5 as best as he could the mismatched rebars?

6 A. Yes.

7 Q. Did it occur to you to ask Ah Chun why no written order
8 or instructions from Leighton is okay?

9 A. 當時我有問過呢個問題。

10 Q. In your understanding of contract management,
11 an instruction of the nature said to have been given by
12 Henry Lai is something that should have been contained
13 by way of a written order; correct?

14 A. 唔同意。

15 Q. I'm not going to debate with you.

16 Let me move on to your witness statement at EE1,
17 page 78.

18 In paragraph 58, you said:

19 "Chun told me there was no way that the said water
20 leakages was the fault of Wing & Kwong. He ...
21 explained to me what had happened when the Wing & Kwong
22 rebar fixers were working and conducting rebar fixing
23 works. He told me the following ..."

24 Then at subparagraph (1), summarising it, he talked
25 about a mismatch in shape, taper-cut threads -- the
26 couplers were couplers with taper-cut threads, but the

1 bars were with parallel threads; right? This was the
2 problem described in subparagraph (1), as you can see;
3 correct?

4 A. 係。

5 Q. Then at the bottom of subparagraph (1), you said:

6 "... there was also situation where the concrete
7 covering ... was not hacked off fully ..."

8 Do you see that? Do you see that?

9 A. 係。

10 Q. Can you confirm that these were the only two problems
11 mentioned to you by Ah Chun?

12 A. 你講嘅意思喺呢一段裏面㗎，定係點呀？我唔係好...

13 Q. During your conversation with Ah Chun, these were the
14 only two problems about fixing the rebars that he
15 mentioned to you?

16 A. 嗰兩個問題係咪意思兩個coupler，一個尖頭，一個平頭，另一個就係佢冇
17 鑿開石屎，你意思係咪講呢兩個問題？

18 Q. Correct.

19 A. 係。

20 Q. Look at EE1, page 79, it's actually your statement,
21 paragraph 58(5). You said -- this was describing your
22 conversation with Ah Chun:

23 "Chun was also told by Leighton (I assume also by
24 Henry Lai) that because of differences in the design of
25 the two contracts (1111 and 1112), Leighton believed

1 there is no need to tighten the rebars in all the
2 couplers left by contract no. 1111, therefore Leighton
3 did not hack off all of the concrete which covered the
4 couplers."

5 Do you see that?

6 A. 見到, yes。

7 Q. Would it surprise you if I tell you that when Ah Chun
8 gave evidence, he said Henry Lai had not told him this?

9 A. 唔覺得驚訝, 因為我真係--我當時記得係咁。

10 Q. Let me go to the letter that was written on your
11 instructions to Leighton by Wing & Kwong. Look at EE1,
12 page 291. In fact, it starts at 290.

13 Mr Pennicott had looked at this letter with you this
14 morning; remember?

15 A. Yes.

16 Q. Now, you remember we had some difficulty trying to work
17 out, when we talk about seven months, seven months from
18 what; remember?

19 A. 記得。

20 Q. Look at the bottom of this page, at 290. You said:

21 "The captioned location of the tunnel is connected
22 to another contract of MTR ... As the sub-contractor of
23 contract no. 1112, we could only communicate with the
24 main contractor of contract no. 1111 through your
25 company or there was not any way to get the details of
26 contract no. 1111. To make sure the connection is

1 either coupler with parallel threads or with taper-cut
2 threads so as to prepare the relevant materials to carry
3 out the work at all time, our Chun has enquired your
4 Henry in February 2017. We received a reply from Henry
5 that he did not know the details of contract no. 1111.
6 He then instructed us to prepare materials of parallel
7 threads, according to his experience and final confirmed
8 order material by Leighton. The materials of the
9 coupler was supplied by Leighton, Wing & Kwong no right
10 to choose any brands, any type of couplers can be used
11 for this project. We are providing labour only and your
12 engineers were fully instructing and monitoring this
13 section of work."

14 Do you see that?

15 A. 見到, yes。

16 Q. Can you confirm this was based on what Ah Chun told you
17 and what you then passed on for him to draft?

18 A. 係, 冇錯, yes。

19 Q. Take it from me -- and I think Mr Pennicott also raised
20 this -- in terms of the stitch joint works in the NAT,
21 you know there are three stitch joints in the NAT;
22 correct?

23 A. 係。

24 Q. In this Inquiry, we have given shorthand terms for these
25 joints, but in order not to confuse you, I would
26 describe them in longhand rather than shorthand. In

1 terms of the stitch joint works in the NAT, the earliest
2 one when work was done was the EWL stitch joint
3 1111/1112. Are you aware of that?

4 A. 知道。

5 Q. We in this Inquiry have called that "joint 3"; all
6 right?

7 A. (Nodded head).

8 Q. Take it from me, that was done in late January, or work
9 started in late January; all right?

10 A. (Nodded head).

11 MR PENNICOTT: 2017.

12 MR SHIEH: 2017.

13 And you know that there is actually a joint called
14 the shunt neck joint in the NAT; correct?

15 A. 唔，知道。

16 Q. That was on the EWL; you know that?

17 A. 知道。

18 Q. That also involved screwing rebars into couplers on the
19 contract 1111 side; do you know that?

20 A. 知道。

21 Q. Work on the shunt neck joint started in early January
22 2017; you know that?

23 A. 知道。

24 Q. Ah Chun has told us in this Inquiry that way back in
25 early January, when work started on the shunt neck joint

1 on the East West Link, EWL, he already saw problems
2 about mismatch in shape between couplers and threads, as
3 well as not hacking all the concrete, in early January.

4 Are you aware of that?

5 A. 你嘅意思我幾時知唔知道呀？

6 Q. Do you know it is Ah Chun's evidence in this Inquiry
7 that in early January, when work started on the shunt
8 neck joint, he, Ah Chun, already saw problems about
9 mismatch in shape as well as failure to hack off all the
10 concrete? Do you know Ah Chun said this to this
11 Inquiry?

12 A. 我知道。

13 Q. Did Ah Chun say that to you in February 2018, when you
14 asked him about the problems?

15 A. 有。

16 Q. In which case, can you help me: if he did tell you in
17 February about the problems that he saw in January 2017,
18 it doesn't make sense for this letter to say that
19 Ah Chun enquired with Henry in February about the
20 couplers and the threads to be used or ordered. Do you
21 accept that?

22 A. 我只係憑當時問佢嗰個寫嘅咋，所以...

23 Q. Right. What I'm suggesting to you is this. Ah Chun,
24 according to Ah Chun, he already saw these problems in
25 early January 2017, therefore he could not have enquired

1 with Henry in February 2017 about what threads or what
2 kind of threading materials or what kind of couplers to
3 order, as described in this letter.

4 A. 如果你而家咁講，係囉，但係我當時就聽佢係講畀我聽，我就寫。

5 Q. Can you look in the middle of page 291:

6 "The captioned work was launched in July 2017."

7 I take it that when the letter says "The captioned
8 work", it is referring to the stitch joint at the NSL
9 between 1111 and 1112; correct?

10 A. 喎。

11 Q. And maybe the internal joint within 1111/1112; correct?

12 A. 應該唔--淨係1111同埋1112嗰個字。

13 Q. Thank you. So it's NSL 1111/1112, when you talk about
14 July 2017?

15 A. 係。

16 Q. Thank you. So that's what we call "joint 1" in this
17 case.

18 The letter goes on to say:

19 "After the concrete surface had been hacked off
20 (Actually some of the couplers still not yet disposal
21 after Leighton say hacked works completed), the
22 connection was found to be coupler with taper-cut
23 threads. Our Chun stated right away that the rebar we
24 prepared according to Leighton's information which could
25 not tighten into the coupler completely. However,

1 according to the verbal instruction given by Leighton,
2 there was not enough time to rethread the rebar and your
3 company urged our side to try our best to tighten ...
4 Moreover, because of the differences in the design of
5 the two contracts, your company believe there is no need
6 to tighten rebar in all the coupler left by contract
7 no. 1111."

8 Do you see that paragraph?

9 A. 睇到, yes, I see this one。

10 Q. What I want to ask you is this. This letter made it --
11 this letter looked as though the problem about
12 a mismatch was first found in July 2017, when in fact,
13 according to Ah Chun, if what Ah Chun said is correct,
14 the problem had been discovered half a year ago, in
15 January 2017. Do you accept that?

16 A. 我唔接受。

17 Q. When Ah Chun described what he regarded to be problems
18 to you, did he tell you that he already saw these
19 problems in January 2017, when he worked on the shunt
20 neck joint?

21 A. 當時佢講嘅時候冇講月份。

22 Q. If he did not mention the month, then why were you able
23 to say in this letter "July 2017"?

24 A. 我哋有工作紀錄㗎嘛。

25 Q. The work records would tell you when work was done at

1 different joints, but the work records wouldn't tell you
2 at what time Ah Chun saw any problems; correct?

3 A. 係。

4 Q. So, for when Ah Chun first saw any problems, you had to
5 rely on what Ah Chun had told you; correct?

6 A. 係，冇錯。

7 Q. I put to you again, in this letter, there is no
8 indication that problems had already been discovered by
9 Ah Chun in January 2017; correct?

10 A. 係。

11 Q. And if what Ah Chun said is true, that -- sorry, let me
12 start again.

13 And if problems had already been encountered in
14 January for the shunt neck joint, there is no way in
15 which Ah Chun could still enquire with Henry in February
16 what kind of materials to prepare, and for Henry to
17 instruct Ah Chun to prepare materials of parallel
18 threads; do you accept that?

19 A. Yes，係。

20 MR SHIEH: I have no further questions.

21 MR TSOI: I'm sorry, I hesitate to interrupt, but I raise
22 this now because Mr Shieh did put to Ah Chun in Day 3 of
23 his cross-examination with Ah Chun in relation to the
24 unit weight charging method of the sub-contract, and
25 thereby suggesting a motive as to why there may be

1 a case where it was Loyal Ease who would decide to rush
2 the work.

3 Now, I wonder if Mr Shieh still maintains that
4 position, because if he does then it is only fair that
5 he puts it to this witness, who knows something about
6 the sub-contract. Of course, if he does not, then
7 I would not say anything more about that. But it's only
8 fair because this is the witness that the case should be
9 put to, and if the witness has an answer then let the
10 witness answer it.

11 MR SHIEH: Well, if Mr Tsoi wants -- because I had thought
12 that the question of charging method is no longer in
13 issue.

14 MR TSOI: If that's the case and if it's not going to be
15 suggested that there is a motive there, then of course,
16 as I say, I'm not going to say any more about this. But
17 it has been suggested to Mr Ng that there is a motive
18 for Loyal Ease to do the work as quickly as possible.
19 Now, if that's no longer the suggestion, then of course
20 that is no longer an issue.

21 MR SHIEH: Mr Cheung sits in the back room. It's not
22 suggested that at the time when the relevant
23 conversations took place, Mr Cheung was consulted. So
24 it is not something that I needed to put to Mr Cheung.

25 Perhaps I can actually spare the hassle by asking
26 a few more questions, if that would put Mr Tsoi's mind

1 at ease.

2 Mr Cheung, some final questions. Can you confirm
3 that the first time that you ever heard about any
4 problems encountered on site by Ah Chun concerning
5 difficulty or impossibility of screwing in, and what
6 Henry Lai is said to have instructed Ah Chun, was in
7 February 2018?

8 A. 係。

9 Q. And so it would be obvious but I'm suggesting to you, at
10 the time when the relevant works took place, whether in
11 January 2017 or in July 2017, Ah Chun did not contact
12 you to ask you for any decision or instructions as to
13 how he should proceed?

14 A. 冇。

15 Q. So whatever act or whatever ways of doing things on site
16 in January or July 2017 in relation to the stitch joints
17 and the shunt neck joints were not done as a result of
18 any decision or instructions given by you; correct?

19 A. 唔係。

20 MR SHIEH: I have no further questions. On that basis,
21 there is nothing I need to put to him about any thinking
22 behind anything which could have motivated Ah Chun to do
23 things.

24 MR TSOI: I'm grateful.

25 CHAIRMAN: Yes.

26 Mr Boulding?

1 MR BOULDING: Sir, we have no questions for this witness.

2 Thank you.

3 Cross-examination by MR HO

4 MR HO: Mr Cheung, good morning. I appear for the
5 government. I have some questions for you.

6 Can you please pick up your witness statement and
7 turn to paragraph 36.

8 A. 36段。

9 Q. Now, in subparagraph (1), you talk about clause 7.4 in
10 the sub-contract, which disallows Wing & Kwong from
11 contacting MTRC. Do you see that?

12 A. 見到。

13 Q. Can I just ask this: is this a common clause in the
14 industry?

15 A. 係。

16 Q. Do you know what is the rationale behind this clause?

17 A. 可能指示唔清晰，即係唔代表係main contractor嘅instruction，所以--
18 因為我哋嘅合約係同main contractor嚟嘛，我有理由take over咗佢
19 同另外一個party講。

20 Q. Well, in the present case, have you or any of your
21 colleagues instructed the Wing & Kwong workers not to
22 communicate with MTRC directly?

23 A. 冇畀過呢個指示。

24 Q. Because I just want to make it clear whether there is
25 any -- whether it is Wing & Kwong's stance that you

1 actually encountered any difficulties in reporting the
2 matter to MTRC because of the legal restriction in this
3 sub-contract.

4 A. 一般都係咁，即是我唔話法律限制就唔--即係一般咁多地盤個溝通嘅渠道都係
5 咁，我哋都係同main con.，甚少同業主去溝通，即係MTR好、大業主好，
6 我哋都係同個main contractor去溝通嘅啫。

7 Q. I see. Perhaps we will move to another topic.

8 COMMISSIONER HANSFORD: Sorry, Mr Ho, we are still getting
9 the translation.

10 I think we have finished now.

11 MR HO: Perhaps we can move to another topic just touched on
12 by Mr Pennicott and Mr Shieh. Can you turn to
13 bundle EE1, page 290.

14 In the penultimate paragraph on this page, you talk
15 about deliberating -- Mr Ng Man Chun deliberating the
16 particulars of the relevant location with Mr Henry Lai.
17 Do you see that?

18 A. EE290? 係。

19 Q. What do the particulars here involve? Does it involve
20 the type of couplers or the type of rebars to be
21 ordered?

22 A. 係，訂嘅絞牙嘅種類。

23 Q. Now, in the last paragraph on this page, you mention
24 a conversation between Ng Man Chun and Henry in February
25 2017, and in that conversation Ah Chun enquired with

1 Henry Lai about the type of rebars to be ordered. Do
2 you see that?

3 A. EE290最冠二條咪"to make sure the connection is either
4 coupler with parallel threads"嗰段，係咪呀？

5 Q. Correct.

6 A. 係，見到。

7 Q. You presumably received information about this
8 conversation from Ah Chun; correct?

9 A. 係，冇錯。

10 Q. This conversation does not appear in either Ah Chun's
11 witness statement or your witness statement, so my
12 question to you is: are you still sure that this
13 conversation took place?

14 A. 係。

15 Q. And on what basis?

16 A. 因為呢封信當時係我同阿俊傾完電話去寫㗎嘛，當時就係base嗰幾句寫嘅。

17 Q. There just was one last topic I want to explore with
18 you. If you would be kind enough to look at bundle EE1,
19 page 306.

20 In this letter, you would see that Leighton had
21 threatened to recover the rectification costs from Wing
22 & Kwong.

23 So may I ask, after or subsequent to this letter,
24 was there any follow-up action from Leighton?

25 A. 冇。

1 Q. Are there any ongoing court proceedings or arbitration
2 proceedings between you and Leighton, or between Wing
3 & Kwong and Leighton?

4 A. 冇。

5 MR HO: Thank you, Mr Cheung. I have no other questions for
6 you.

7 Re-examination by MR TSOI

8 MR TSOI: Mr Cheung, just going back to the letter which you
9 have been questioned extensively -- oh, Pypun, I am so
10 sorry.

11 MR LIU: I have no questions from Pypun.

12 MR TSOI: Sorry, I had not anticipated that.

13 Going back to the letter, Mr Cheung, that you have
14 been questioned extensively on -- we can find that at
15 E29E290.

16 A. Yes.

17 Q. Just on the question Mr Ho asked you, about the
18 suggestion at the end of that page that there was
19 conversation between Chun and Henry in February 2017 --
20 can you see that?

21 A. Mmm.

22 Q. You said during cross-examination by Mr Shieh that
23 Ah Chun did not actually tell you the month; right?

24 A. Mmm.

25 Q. So I just want to clarify with you whether -- doing the
26 best you can, can you recall, the month you say there,

1 was that something Ah Chun told you, or was it something
2 you read certain things and worked out yourself? Which
3 one is it?

4 A. 我真係唔記得。

5 Q. Going back to, then, the contract, the
6 sub-contract -- you have been shown this clause,
7 clause 2.6. I think we can find that at page CC876.
8 Remember you were shown this clause, clause 2.6, by
9 Mr Shieh?

10 A. Mmm.

11 Q. And you confirmed that no written prior consent was
12 sought or obtained from Leighton for the sub-contract
13 with Loyal Ease; yes?

14 A. (Nodded head).

15 Q. I want to ask you this. Although we know no written
16 consent from Leighton was obtained, in your knowledge,
17 did Leighton know about Loyal Ease?

18 A. 一定知。

19 Q. Why do you say that?

20 A. 因為喺上中期糧款嘅時候，有時佢哋會問我哋擺我哋嘅工人出糧紀錄嘅，甚至乎
21 係埋final account嘅時候，佢要prove我哋有畀晒工人畀錢嘅時候，我哋
22 亦都有將Loyal Ease嘅所有出糧紀錄都畀咗禮頓嘅QS。更甚至就係有時喺一啲
23 工人嘅受傷嘅時候，我哋要提交工人嘅出薪紀--支薪紀錄嘅時候，我哋都會將
24 Loyal Ease嘅工人出薪紀錄--出糧紀錄畀埋禮頓嘅，by email, by hand
25 都有。所以佢係會知道有Loyal Ease呢間公司。

1 Q. Have you got proof of that?

2 A. 我有帶嚟，可唔可以搵出嚟？

3 MR TSOI: If it pleases the Commission -- because again, if
4 I may, the dilemma I'm in is that it has been suggested
5 by Mr Jonathan Kitching that Leighton was not aware of
6 Loyal Ease. Now, that is not exactly the suggestion put
7 by my learned friend, because my learned friend is very
8 restricted in that no written prior consent was
9 obtained. So, again, I wonder whether it is the
10 suggestion that Leighton did not know about Loyal Ease
11 at all, or is it just that no prior consent had been
12 obtained, according to clause 2.6?

13 MR SHIEH: Well, it's really a very small point. If my
14 learned friend has a document which, according to him,
15 shows any kind of knowledge on our part, then we are
16 content for those to be produced and we can consider
17 that.

18 MR TSOI: Well, sure. Would the witness then like to --

19 MR SHIEH: Subject of course to Mr Pennicott's observation
20 as to how it fits into the overall scheme of things.

21 MR PENNICOTT: Sorry, I'm just looking at Mr Kitching's
22 witness statement.

23 MR TSOI: I believe I may have the references. I think he
24 mentions this in his first statement at paragraph 21.
25 We can see that at page CC6491. Then he says it in
26 witness statement number 3.

1 MR PENNICOTT: Paragraph 11.

2 MR TSOI: Paragraph 11, at page CC6553.

3 MR SHIEH: I want to take a rather pragmatic approach,
4 because instead of opposing or objecting or whatever,
5 because this was filed some time ago, but if Mr Tsoi
6 actually has some documents to show, rather than to try
7 to appear to be cutting things out, I'm perfectly
8 content for the document to be shown and we can then
9 consider it and take instructions.

10 MR TSOI: I'm really in your hands, Chairman.

11 CHAIRMAN: Sorry, I was having a brief word with the
12 co-Commissioner and I took my headphones off, so
13 I missed that.

14 Mr Shieh, apologies -- could you repeat that?

15 MR SHIEH: I was just saying I would take a rather pragmatic
16 approach. Instead of trying to object or oppose, if
17 Mr Tsoi has some documents to show, I am content for
18 documents to be produced and then we can consider it.
19 Even though this point has actually in Mr Kitching's
20 statement for some time, I am content for him to produce
21 whatever documents he wants to produce now.

22 CHAIRMAN: All right.

23 MR TSOI: Perhaps the easiest way may be for the witness to
24 produce them to the Commission and then the Commission
25 can circulate them to the parties, and if anything
26 arises then we can of course recall Mr Cheung, but

1 I doubt --

2 CHAIRMAN: All right. Let's do it on that basis.

3 MR TSOI: There is one last issue I would like to clarify
4 with Mr Cheung.

5 Mr Cheung, in relation to the sub-contract with
6 Loyal Ease that we can see at, I think, EE401. That's
7 the Chinese version. I think the English version may be
8 EE402.

9 Prior to this Inquiry, has this sub-contract ever
10 been supplied to Leighton?

11 A. 有。

12 Q. Why? What were the circumstances that it was supplied
13 to Leighton?

14 A. 當時係有工人受傷，禮頓就要求我哋畀一啲文件去證明呢個工人嘅身分嘅時候，
15 我哋有將呢份分判合約畀埋禮頓。

16 Q. Can you now recall exactly to whom it was supplied to?

17 A. 我有print到嗰個email嚟。

18 Q. Perhaps that would be one of the materials that you
19 supply to the Commission for them to circulate; all
20 right?

21 A. 可以。

22 MR TSOI: I have no further questions.

23 CHAIRMAN: Yes. I take it that the correspondence and other
24 documentation would be paginated and then circulated.

25 MR TSOI: Yes.

1 MR PENNICOTT: Sir, I wonder if I might, just at this
2 juncture, invite Mr Cheung to hand over those documents
3 now, if you've got them.

4 A. 可以，可以，可以。Can I open my box? (Handed).

5 CHAIRMAN: Yes.

6 MR PENNICOTT: He worryingly has a suitcase!

7 COMMISSIONER HANSFORD: I saw that on the way in.

8 CHAIRMAN: Oh dear, yes.

9 WITNESS: This is the email we sent to Leightons about
10 the injured workers with the contract. And this is
11 the supporting document we submit to Leighton, Colin,
12 Mark Manning and Kenneth about the Loyal Ease payment
13 record. Actually we submit to them every month but I
14 cannot find the record but I found some. Maybe not
15 every month but sometimes.

16 MR PENNICOTT: Sir, can I just make some enquiries as to how
17 quickly we could get these paginated and copied?

18 CHAIRMAN: Certainly.

19 (Discussion off the record)

20 MR PENNICOTT: Second thoughts are best. We can get these
21 paginated and copied relatively quickly. What was going
22 through my mind was trying to avoid the necessity of
23 having to recall Mr Cheung at some time in the future
24 and try to get this done as quickly as possible, even
25 this afternoon. On the other hand, I recognise it is
26 pretty unfair to Leighton to give them this amount of

1 documentation and invite them to put any further
2 questions to Mr Cheung this afternoon.

3 So I think actually probably second thoughts are
4 best and we should do this in a rather more orderly
5 fashion.

6 So I will obviously organise the pagination and
7 copying of these documents, and if, in the fullness of
8 time, Leighton or anybody else feel, or I feel, that we
9 need to invite Mr Cheung to come back, we will do that,
10 rather than hold him here for this afternoon, and we
11 will just proceed with the next witnesses as we had
12 planned to do so.

13 CHAIRMAN: That seems the best way forward.

14 MR PENNICOTT: That's probably the best way of doing it.

15 MR SHIEH: Yes.

16 MR PENNICOTT: I think Mr Shieh agrees with that.

17 CHAIRMAN: Good. Then we will do that. Then I think this
18 witness has finished his evidence, subject to possible
19 recall.

20 MR PENNICOTT: Yes, sir.

21 CHAIRMAN: All right.

22 Mr Cheung, your evidence is now finished.

23 WITNESS: Thank you.

24 CHAIRMAN: So you can go. There is a possibility, however,
25 because of the new documents which you have just taken
26 out of your bag, that once they have been studied, you

1 may have to come back, just to answer some questions in
2 respect of that documentation. Okay?

3 WITNESS: Got it.

4 CHAIRMAN: But you can work on the basis that you have now
5 finished your evidence and free to go. Okay?

6 WITNESS: So I can discuss this matter?

7 CHAIRMAN: Yes, you may. You have finished your evidence.

8 WITNESS: Thank you.

9 CHAIRMAN: Thank you.

10 (The witness was released)

11 MR PENNICOTT: Sir, subject to what we have just been
12 discussing with Mr Cheung, that concludes the three
13 witnesses from Wing & Kwong, so we are now going to --
14 obviously we've had Mr Lai already from Leighton, so we
15 will now be returning to the Leighton witnesses and the
16 next Leighton witness is Mr Jonathan Kitching.

17 Sir, before we call -- Mr Shieh calls Mr Kitching,
18 can I just mention one matter, and it's this. We have
19 a witness statement from a Mr Daniel Teoh, a Leighton
20 witness. His witness statement is at CC10/6498 and is
21 dated 24 May 2019.

22 Sir, all parties and the Commission have agreed that
23 no questions need to be asked of Mr Teoh, so he will not
24 be called. His name will fall off the list, but his
25 witness statement will be uploaded onto the Commission's
26 website in the usual way.

1 Secondly and similarly, we have a witness statement
2 from a Mr Cheung Chi Wai that was dated 30 May, that is
3 on Thursday last week. Mr Cheung Chi Wai's name did not
4 get onto the timetable, and you may recall it's a very
5 short statement and he was the interpreter at
6 a conversation between Mr Kitching and Ah Chun --

7 CHAIRMAN: Ah, yes.

8 MR PENNICOTT: -- at that meeting. Again, helpfully,
9 everybody has indicated there is no desire to ask Cheung
10 Chi Wai any questions, so he hasn't even got onto the
11 list, but anyway he won't be appearing on the list, but
12 similarly, his witness statement, which is at C10/6532,
13 will go onto the website.

14 CHAIRMAN: All right. Good.

15 MR PENNICOTT: Just so that everybody knows where we are.

16 CHAIRMAN: Yes.

17 MR SHIEH: Mr Chairman, Mr Kitching is here, so I now
18 proceed to call Mr Jonathan Kitching.

19 CHAIRMAN: Yes.

20 MR JONATHAN CHARLES KITCHING (affirmed)

21 Examination-in-chief by MR SHIEH

22 MR SHIEH: Mr Kitching, thanks for coming to give evidence.

23 You have made three witness statements for the
24 purpose of this Commission of Inquiry. I will be taking
25 you to those statements. But before I do so, can I ask
26 you to look at bundle CC2, page 529.

1 A. Okay, on the screen.

2 Q. This is a corporate chart, an organisation chart, as of
3 31 August 2017. I'm just trying to place you in this
4 organisation chart. So if you look at the top, you see
5 the blue box, "MTRC"; yes?

6 A. Correct.

7 Q. And we can see your photograph, in a more casual outfit,
8 immediately below "MTRC"?

9 A. Correct.

10 Q. So that was the position you occupied at the material
11 time in this case, 2017 and 2018?

12 A. Correct.

13 Q. As project director?

14 A. Yes, correct.

15 Q. Thank you.

16 Can you then look at your witness statements. First
17 of all, CC10, page 6487.

18 A. Yes.

19 Q. That is your first witness statement?

20 A. Correct.

21 Q. If you turn to page 6491, that is your signature on that
22 page, is it?

23 A. That is correct.

24 Q. Then can you turn in the same bundle to page 6534.

25 A. Yes.

26 Q. That is your second witness statement?

1 A. Yes, correct.

2 Q. And at 6535, is that your signature?

3 A. Yes, it is.

4 Q. Lastly, CC11, bundle CC11.

5 A. Mm-hmm.

6 Q. At page 6548.

7 A. Yes.

8 Q. That is your third witness statement?

9 A. Correct.

10 Q. And your signature at 6553?

11 A. Correct.

12 Q. So do you put forward the contents of these three
13 witness statements as your evidence in this Commission
14 of Inquiry?

15 A. Yes, I do.

16 Q. Thank you. Now, please remain seated because counsel
17 for the Commission, Mr Pennicott in front of me, and
18 counsel for the other parties may have questions for
19 you, as may the Commission, and after all the
20 questioning I would have a chance to ask you follow-up
21 questions by way of re-examination if I want to. Do you
22 understand?

23 A. I understand, yes.

24 MR SHIEH: Before examination of Mr Kitching begins, can
25 I just lay down a marker? It relates to the documents
26 just produced by Mr Tsoi concerning the alleged

1 knowledge by Leighton of the sub-contract with Loyal
2 Ease.

3 As I said, I took a rather pragmatic approach and
4 I didn't want to create any obstruction, but in case
5 anyone wants to ask questions of Mr Kitching concerning
6 those documents, could I ask that those questions not be
7 asked immediately but wait until after the lunch break?
8 And I would also ask that after we have had a chance of
9 seeing the documents, we have limited permission to
10 speak to Mr Kitching confined solely on the subject
11 matter of those new documents? I didn't raise it at the
12 time because I don't want to take up time, but I hope
13 this is not controversial. If documents are produced so
14 recently, we should, in fairness, have a chance to
15 confer with Mr Kitching solely on the point of those
16 documents. I hope that is acceptable.

17 CHAIRMAN: It sounds sensible.

18 MR PENNICOTT: Sir, it is entirely acceptable, of course, to
19 the Commission. As Mr Shieh has indicated, that must be
20 entirely right. I certainly won't be asking any
21 questions about those documents, not yet having seen
22 them.

23 CHAIRMAN: Good. Thank you, Mr Shieh. That's acceptable.

24 MR PENNICOTT: Thank you very much, sir.

25 Examination by MR PENNICOTT

26 Q. Mr Kitching, Mr Shieh has already explained how it's

1 going to work so I'm not going to repeat that, and good
2 afternoon and thank you very much on behalf of the
3 Commission for coming to give evidence.

4 A. A pleasure.

5 Q. We have seen from the organisation chart that Mr Shieh
6 took you to that -- that was dated August 2017. As
7 I understand it, it was at about that time that you took
8 up your position as project director; is that right?

9 A. It was very late August 2017, yes.

10 Q. Okay. Had you any prior involvement with this
11 particular project before taking up your position as
12 project director in August 2011?

13 A. No, absolutely nothing.

14 Q. And that means the whole of the SCL project, not just
15 this contract?

16 A. The whole of the SCL project, correct.

17 Q. I think we saw very fleetingly to the left of your
18 photograph was Mr Zervaas?

19 A. Correct.

20 Q. Was he your predecessor; have I got that right?

21 A. Yes, he was the -- my predecessor, correct, yes.

22 Q. I had to think back to the first part of the Inquiry for
23 that. All right.

24 So I think it must follow from that that Mr Zervaas
25 was the project director at the time of the construction
26 of the joints, the stitch joints and the construction

1 joint, with which we are concerned?

2 A. I believe this is fact, yes.

3 Q. Okay. Now, we saw that site organisation chart, and
4 perhaps just for the purposes of my next couple of
5 questions we could get it back up on the screen, please.
6 It's CC2/529.

7 I don't know if we could just take out the MTRC, as
8 it were, with the greatest of respect, to see the next
9 line.

10 A. Yes.

11 Q. Can I ask you this, as a general question arising out of
12 some evidence that Mr Henry Lai gave to the Commission.
13 Mr Kitching, who is ultimately responsible for
14 determining the number and the discipline of the
15 personnel that are deployed to any given area of the
16 contract? I mean, we are here concerned with primarily
17 the NAT, the SAT and the HHS, as you know. Who
18 determines, as I say, the discipline, the number of
19 personnel deployed to each area?

20 A. Typically it will be the person in charge of that area,
21 such as a section manager or a construction manager.
22 Obviously it gets elevated to the project director for
23 approval.

24 Q. So if one is focusing just on the NAT for the moment --
25 and the reason I'm asking you this question, as you
26 perhaps may pick up, is that in answer to some questions

1 from the Chairman and the Commissioner, Mr Lai told us,
2 Henry Lai told us, that at times he felt overstretched,
3 overworked, and this was one of the reasons why the RISC
4 forms weren't submitted, issued and submitted. And so,
5 if he had that sort of problem, who would you expect him
6 to take that problem to?

7 A. Initially, it would be his immediate supervisor, his
8 immediate section manager, and if he felt he wasn't
9 getting anywhere, then he would be able to elevate it to
10 more senior levels.

11 Q. Is the sort of culture of the organisation that you
12 would encourage people to tell their senior managers, if
13 they felt in that way?

14 A. Obviously I can't talk for the people before me, but
15 certainly in my case I try and promote that; I have
16 an open-door policy.

17 Q. As the works proceed in any particular area, who is
18 responsible for monitoring the sufficiency of the number
19 of personnel that have been deployed?

20 A. Again, it's the section manager.

21 Q. So if, as we know, as unfortunately happened, there are
22 quite a number -- and let's just focus on the NAT for
23 the moment.

24 A. Sure.

25 Q. We are going to be discussing other areas with other
26 witnesses -- RISC forms are not being submitted, issued

1 and submitted, from Leighton to the MTR, is that
2 something the section manager ought to know about?

3 A. For sure.

4 Q. This is not something that -- let's say Henry Lai is
5 responsible, let's say he's responsible for issuing and
6 submitting the RISC forms -- this is not something that
7 would be unknown to the more senior personnel; would you
8 accept that?

9 CHAIRMAN: Sorry, I don't quite --

10 A. We --

11 CHAIRMAN: I do apologise. I have perhaps not understood
12 that as well as I should have done.

13 MR PENNICOTT: No, no. Let me try it again.

14 Let's assume for the moment that Henry Lai himself
15 is responsible for issuing and submitting RISC forms to
16 the MTR for hold-point inspections, let's say, and let's
17 say there's an absence of those RISC forms, as we know
18 there is. Is that something you would expect Mr Lai's
19 senior, senior manager, whoever, to know about? It's
20 not something Mr Lai would hide from them?

21 A. I would expect the more senior people to understand it,
22 yes.

23 Q. To appreciate --

24 A. To appreciate that they're not being done.

25 Q. And how high up the organisation would you expect that
26 appreciation to go?

1 A. To the top. I mean, if it's habitual and not being
2 done, it should be elevated up to the top until it's
3 sorted out.

4 Q. When you took up your position as project director,
5 Mr Kitching, did you familiarise yourself with
6 Leighton's contractual obligations with regard to the
7 supervision that they should be providing when executing
8 the works?

9 A. Sorry, can you repeat that question?

10 Q. Sure. Let's put it in context. We've got a rebar
11 fixing sub-contractor. I accept that by the time you
12 arrived, it was probably more or less finished --

13 A. Yes.

14 Q. -- because the civil works, I think, on the civil side,
15 were more or less complete at that time; is that right?

16 A. They were, yes.

17 Q. Did you make it your business to find out what level of
18 supervision should have been applied to that rebar
19 fixing sub-contractor by Leighton?

20 A. Well, as you rightly say, the works were complete when
21 I started, so I wasn't really looking at what should
22 have been done in the past. I was looking for what we
23 have, resources we have, to complete the rest of the
24 works.

25 Q. Okay. It's just that we know -- and I won't take you to
26 it but we've seen it a couple of times already -- there

1 was apparently on the NAT, for example, a requirement to
2 keep a log book and various details in that log book.

3 A. Mm-hmm.

4 Q. And that's not something that you were aware of,
5 presumably?

6 A. Not at the time, no. When I started, no.

7 Q. It's something you've subsequently --

8 A. Subsequently learnt, yes.

9 MR PENNICOTT: All right.

10 Sir, I'm about to go on now to a completely separate
11 topic. I see it's three minutes to 1.00.

12 CHAIRMAN: Yes, certainly.

13 MR PENNICOTT: Perhaps we could come back at 2.15?

14 CHAIRMAN: 2.15.

15 We are going to adjourn now to 2.15, Mr Kitching.

16 WITNESS: Okay.

17 CHAIRMAN: One thing is said to all witnesses, when

18 I remember: when you are giving your evidence, when we
19 have these form of breaks, you are not entitled to
20 discuss your evidence with anybody else. You can
21 obviously speak about other things, but you are not
22 entitled to sit down and analyse or discuss or ask
23 questions about your evidence.

24 WITNESS: I understand.

25 CHAIRMAN: Okay. 2.15.

26 (12.58 pm)

1 (The luncheon adjournment)

2 (2.18 pm)

3 MR PENNICOTT: Mr Kitching, good afternoon.

4 A. Good afternoon.

5 Q. Moving on, in paragraphs 5 to 8 of your first witness
6 statement -- that's at CC10/6488 -- you refer to your
7 request to Mr Holden, William Holden, to investigate the
8 cracking and the water seepage to the NSL 1111/1112
9 stitch joint. Do you see that?

10 A. Yes, I see that.

11 Q. You say in paragraph 6 that Mr Holden reported the crack
12 to you, recommended that more breaking up -- or breaking
13 open, rather -- should be done of the concrete along the
14 NSL stitch joint in order to identify the cause of the
15 cracking and water leakage.

16 Mr Kitching, in your view, was the cause of the
17 cracking and the water leakage definitively determined?

18 A. We had had an issue with water coming in for a while,
19 and then it got noticeably larger in early February
20 I think it was. When we opened up some of the areas and
21 found some of the couplers not connected, we assumed
22 that that was the cause. Whether it was definitive --
23 I'm not a structural engineer so it's difficult for me
24 to say, but I would have thought it would have
25 exacerbated the problem.

26 Q. So there was this assumption made by Leighton, and

1 I assume assumption made by the MTRC as well, that
2 having discovered the unconnected rebar, that that was
3 likely to be the cause?

4 A. Yes.

5 Q. Did you go yourself to the site and look at the
6 locations that have been opened up?

7 A. Yes, I did.

8 Q. Would you accept this, Mr Kitching --

9 CHAIRMAN: Sorry to interrupt. I do apologise. You are
10 saying the failure to connect was the probable cause, in
11 your view, without in-depth examination, of the water
12 leakage and the concrete cracking, or just one or the
13 other?

14 Sorry.

15 MR PENNICOTT: No, no, no, that's a fair point.

16 A. Water leakage is quite a common occurrence in the
17 industry, especially in underground structures, where we
18 need to fix it.

19 CHAIRMAN: Yes.

20 A. That wasn't -- the water leak wasn't the concern at the
21 time. The concern was when the crack got noticeably
22 wider at, I forget, I think early February time. That
23 was more the concern.

24 CHAIRMAN: Thank you.

25 MR PENNICOTT: Would I be right in thinking that when the
26 water seepage and perhaps more importantly the cracking

1 occurred, this was regarded by you as a serious matter,
2 you personally as a serious matter?

3 A. Yes.

4 Q. Did you think it warranted a thorough, rigorous
5 inspection -- sorry, investigation?

6 A. We conducted at the time an investigation into what we
7 thought the cause is. Our focus or my focus at that
8 time was to establish the extent of any problems and
9 what remedial works we had to do. That was my focus at
10 the time, to go into an in-depth inquiry, for want of
11 a better word. To establish why it happened, we didn't
12 go down that road at that time.

13 Q. So you would accept, would you, Mr Kitching, that there
14 is no available in-depth, detailed report, analysing
15 joint by joint what had -- the causation, for want of
16 a better word --

17 A. There is not.

18 Q. -- of what happened?

19 A. There is not.

20 Q. And you were not asked to do that by the MTRC, as
21 I understand it?

22 A. No, I don't recall being asked, no.

23 Q. So would this be fair, Mr Kitching: having seen the
24 water seepage, discovered the cracks, cracks increasing
25 in size, having opened up a certain number of areas,
26 discovered the unconnected rebar, that a relatively

1 quick decision was made that the three stitch joints
2 just had to be demolished as soon as possible, taken
3 down and reconstructed?

4 A. Correct. It wasn't much of a decision to make. It was
5 made quickly.

6 Q. It was a pretty quick, no-brainer?

7 A. Yes, it was a no-brainer, a matter of a week or so
8 maybe.

9 Q. Can I just move on to something slightly different,
10 albeit it is still to do with the problem with the
11 stitch joints.

12 In your paragraph 9 of your first witness statement
13 at CC10/6488, you say:

14 "When I learned of the defects at the NAT stitch
15 joints and the joint at the SNJ, I personally sought out
16 and spoke to Leighton's engineer who supervised for
17 these works, Mr Henry Lai."

18 Between August of 2017, when you took up your post
19 as project director, and let's say early February 2018,
20 had you met Mr Lai before?

21 A. Yes, I had.

22 Q. You had had occasion to have discussions with him about
23 other things?

24 A. Absolutely, yes.

25 Q. And you said:

26 "During that conversation, I asked Henry why the

1 rebar was not properly connected to the couplers at the
2 NAT stitch joints and the SNJ and pressed him to explain
3 what happened. I cannot recall the exact words of the
4 conversation but the gist of Henry's response was that
5 he had no idea why the defects had occurred and did not
6 remember anything of note about the NAT stitch joints
7 and the SNJ. I also recall that Henry was upset when he
8 heard about the defects."

9 Can you recall whether that conversation with Mr Lai
10 occurred before or after the opening-up had been done?

11 A. I can't recall the exact date but it would have been
12 around the time that the crack opened up and we had
13 opened up some of the areas to look at the couplers.

14 Q. You received -- and we can look at it if necessary --
15 NCR95 from the MTR --

16 A. Mm-hmm.

17 Q. -- on 9 February 2018, which as we know had some
18 photographs attached to it which showed, at least some
19 of them showed, the unconnected rebar.

20 A. Yes.

21 Q. Did your conversation with Mr Lai take place before or
22 after receipt of that NCR; can you recall?

23 A. I don't recall the exact date when I spoke to Henry.

24 Q. Right.

25 You also go on to talk about a conversation that you
26 had with Joe Tam --

1 A. Yes.

2 Q. -- who was the construction manager for the NAT at the
3 time. You asked him the same sort of questions, but the
4 gist of Mr Tam's response was that he was not personally
5 involved in supervising the works and he knew nothing
6 about what had happened?

7 A. Correct.

8 Q. And the conversation with Mr Tam, as you say, took place
9 at around the same time as the conversation with Mr Lai?

10 A. Correct.

11 Q. You wrote your first letter to Wing & Kwong on
12 12 February 2018. We will look at that in a moment.
13 Did the conversation with Mr Lai -- forget about
14 Mr Tam -- did the conversation with Mr Lai take place
15 before you wrote that first letter?

16 A. I can't recall.

17 Q. That first letter is at EE -- sorry, before we go there,
18 slightly out of order -- another conversation you had
19 was with Mr Ng, or Ah Chun, from Wing & Kwong. Do you
20 recall that?

21 A. Vaguely.

22 Q. You deal with that in your second witness statement at
23 paragraph 6. That's at CC10/6534, where you say:

24 "In around early February we needed to ascertain the
25 extent of unconnected rebar to establish if a full
26 reconstruction was required or some lesser remedial

1 works. I recall having an informal discussion with the
2 Wing & Kwong supervisor ..."

3 Who I think we can safely assume was Mr Ng or
4 Ah Chun?

5 A. Correct.

6 Q. "... via one of my engineers acting as interpreter.
7 Although I do not recall the exact conversation, I am
8 informed that he confirmed maybe as many as 30 per cent
9 or more of the couplers may not be connected."

10 A. Correct.

11 Q. I think he puts it around the other way, that
12 70 per cent were connected, but it probably perhaps
13 amounts to the same thing?

14 A. It does.

15 Q. Again, do you have any recollection as to whether that
16 conversation took place before you wrote your first
17 letter on 12 February?

18 A. No, I don't recall the exact date of that conversation.

19 Q. Ah Chun, in his witness statement, tells us that it took
20 place a couple of days after he'd had a conversation
21 with Mr Cheung, who we were hearing from earlier, and on
22 that basis the conversation, according to Mr Ng,
23 Ah Chun, must have taken place around 9 or 10 February.
24 Would you dispute that?

25 A. No.

26 Q. On that basis, probably, then the conversation may have

1 taken place before you wrote the first letter?

2 A. Could be.

3 Q. Could be? All right.

4 CHAIRMAN: Could I ask -- sorry, I do apologise.

5 MR PENNICOTT: Of course.

6 CHAIRMAN: When you said to Henry Lai, who said he had no
7 memory of anything in particular, were you aware of the
8 fact that it had been his area of responsibility to
9 generally oversee the construction and, more
10 particularly, to conduct hold-point inspections?

11 A. I was aware that it was his area of responsibility, yes,
12 and the roles that come with that, he should have done.

13 CHAIRMAN: By then, was it becoming apparent that there
14 were -- there was fairly extensive failure? I mean --

15 A. In the early stage, no, because I think we only opened
16 up maybe half a dozen locations and exposed maybe four
17 or five couplers in each. So the extent of it was not
18 known at that stage.

19 CHAIRMAN: All right. Yes, thank you.

20 MR PENNICOTT: The first letter that you wrote, Mr Kitching,
21 to Wing & Kwong is in a couple of places but it's most
22 conveniently found at EE271. I'll put that up on the
23 screen, I hope. It's up to you whether you want hard
24 copy or the screen.

25 A. I don't mind.

26 Thanks.

1 Q. So here we are, 12 February, and just looking at the
2 last paragraph -- I think you refer to this in your
3 witness statement, Mr Kitching, as a sort of fairly
4 standard type letters that would go out to
5 sub-contractors in this sort of situation?

6 A. Correct, in any sort of situation where we have defects
7 from a sub-contractor, we would write a similar letter.

8 Q. So who actually wrote this letter? I know you signed
9 it, but who wrote it?

10 A. It looks like Will Holden drafted it. Maybe our
11 commercial manager checked it, by the look of it.

12 Q. You get that from the initials at the bottom of the
13 page?

14 A. Yes.

15 Q. In the last paragraph you say:

16 "Please be advised that should the cause of the
17 water leaks and cracks be due to defective work
18 undertaken or the materials supplied by your company, we
19 will seek to recover all costs incurred in accordance
20 with the terms of the sub-contract."

21 The reality is, Mr Kitching, is it not, that this
22 particular sub-contractor, Wing & Kwong, didn't supply
23 any of the materials; do you agree with that?

24 A. That's correct.

25 Q. So those words were unnecessarily included in this
26 letter?

1 A. Yes. It's a standard letter.

2 Q. Were you aware, when you wrote this letter, of what has
3 now been described as the mismatch between the threaded
4 rebar supplied by Leighton and the tapered couplers
5 installed by the Gammon-Kaden Joint Venture?

6 A. No, at this time I wasn't aware of the Lenton couplers.

7 Q. That you became aware of later?

8 A. Became aware of through investigation later.

9 Q. Then if you would be good enough, please, to go to or be
10 shown EE277. This is a letter of 23 February 2018 from
11 Wing & Kwong to yourself; do you see that?

12 A. Yes, I do.

13 Q. There's a reference to a deliberation, a conversation
14 perhaps, between Mr Ng and Mr Henry Lai; do you see
15 that?

16 A. Yes, I see it.

17 Q. Passing over that to the next paragraph, it says:

18 "The material was ordered by Leighton ..."

19 And that's clearly right, is it not?

20 A. On the request of Wing & Kwong, yes.

21 Q. "... and Wing & Kwong [had] no right to choose which
22 type of coupler can be used for further connected with
23 1111 GCL."

24 That's right, isn't it?

25 A. Correct.

26 Q. "Also, all the works have been inspected by Leighton and

1 relevant parties before concreting ..."

2 That's right, isn't it?

3 A. I assume so. I wasn't there at the time but ...

4 Q. That's what you must have assumed?

5 A. Assumed, yes.

6 Q. "... to ensure all parties ... fully comply with
7 standard and drawings so we don't take any
8 responsibility after concreting."

9 The reference there to "type of coupler can be used
10 for further connected with 1111 GCL", leaving aside the
11 precise language used, Mr Kitching, did this put you on
12 to the mismatch point, or perhaps you had already
13 discovered the mismatch point by now, 23 February; do
14 you recall?

15 A. I think it was becoming evidence in around this time
16 that we had different couplers in the Gammon joint.

17 Q. I think you tell us in paragraphs 14 and 15 that you had
18 another conversation with Henry Lai.

19 A. Mm-hmm.

20 Q. And you say that having referred not just to this letter
21 that we've looked at but also the letter of 26 February,
22 which we can look at in a moment. Was there just one
23 further conversation with Henry Lai after you had
24 received both letters, or did you speak to him after you
25 received this letter, of the 23rd?

26 A. I had a couple of conversations with Henry. The exact

1 timing in relation to receiving of letters, I can't
2 remember.

3 Q. We'll come to the 26th in a moment.

4 Would you go, please, to page 285, EE285.

5 On the 23rd, the same date as the letter we've just
6 been looking at, there is an email from Leighton to Wing
7 & Kwong; do you see that?

8 A. Yes.

9 Q. And it's enclosing what's called a sub-contractor
10 backcharge notice?

11 A. Correct.

12 Q. And the signatures at the bottom, in part F of this
13 form, are, as I understand, Regina Wong's, is that
14 right, and Kenneth Lau?

15 A. Yes.

16 Q. And is that two signatures or one signature?

17 A. Kenneth Lau?

18 Q. No, I beg your pardon -- to the right it's got
19 "Construction manager/project director". Is that your
20 signature?

21 A. No, that's the construction manager, Colin.

22 Q. That's Colin Mitchell's, is it?

23 A. Yes.

24 Q. So you didn't actually sign this backcharge?

25 A. No.

26 Q. But you would have been aware of it?

1 A. I was aware of it, yes.

2 Q. Did you instruct it to be sent?

3 A. I think we had a discussion and the commercial team
4 agreed it needed to be sent. Whether I instructed it,
5 I don't remember, but it was certainly spoken about and
6 we agreed to send it.

7 Q. If we look at "Part C" of the document, "Detailed
8 description of sub-contract works", it says:

9 "Backcharge of rebar, labour, material and resources
10 required for NSL stitch joint rectification upon
11 receiving NCR issued by MTRC."

12 And I think it's uncontroversial that NCR95 was sent
13 with this backcharge notice?

14 A. Correct.

15 Q. "You are to supply labour, material and resources for
16 the rebar fixing for rectification works of stitch
17 joint."

18 Did you really, at this stage, Mr Kitching, have any
19 intention of requiring or requesting Wing & Kwong to
20 carry out the remedial works?

21 A. I didn't think we would get any response from Wing
22 & Kwong in relation to fixing it.

23 Q. It goes on to say:

24 "Break out of existing stitch joint, including
25 and/all flood protection, grouting et cetera. Design,
26 procurement and erection of falsework and formwork."

1 Now, it is right, is it not, that you clearly could
2 not have had any intention of asking Wing & Kwong to do
3 the breaking out of the existing stitch joint, because
4 Mr Holden tells us that on 15 February, ie eight days
5 before this backcharge notice was sent, it had already
6 started?

7 A. Correct.

8 COMMISSIONER HANSFORD: Sorry, if I can just understand --
9 so part C of this form, Mr Kitching, is not what you
10 expected Wing & Kwong to do; it's what -- your work had
11 to be carried out as a result of their defect; is that
12 right?

13 A. That is correct. It would appear to be. I think it
14 should have been worded better in that "this is what we
15 need you to do and this is what we will be charging for,
16 rather than asking you to come and do it." I think the
17 wording could have been better.

18 COMMISSIONER HANSFORD: I understand.

19 MR PENNICOTT: Do you know why the photographs and plans
20 were not sent to Wing & Kwong with the NCR?

21 A. No.

22 Q. Wing & Kwong, on a number of occasions, ask you to set
23 up a joint inspection of the areas of the stitch joints.
24 That didn't happen. Do you know why not?

25 A. I don't recall. I thought there was an inspection with
26 Ah Chun, or at some point with one of the engineers.

1 I thought they did go in.

2 Q. I think there was a very early inspection at just about
3 the time of the meeting, but you had requests in writing
4 from Mr Cheung, or Mr Chan who wrote these letters, for
5 a joint inspection, but no formal joint inspection was
6 ever convened, as I understand it, between Wing & Kwong,
7 other than Ah Chun, and Leighton; is that right?

8 A. That's correct.

9 Q. Do you know why that was?

10 A. Again, back to -- I didn't really see what benefit it
11 would be at the time, because we had started the work or
12 were getting on with the work. It was a busy time, and
13 without wanting to -- at that time, without wanting to
14 go into a witch hunt with everybody, the focus was to
15 get the repairs done and finished at that time.

16 Q. Thank you. If you knew about the mismatch at around
17 23 February 2018, you really believed that there was
18 justification in sending this backcharge notice?

19 A. It's the responsibility of the sub-contractor to make
20 sure the works are installed and completed as per the
21 contract requirement, and if that's not been the case
22 and there's a defect and we have to do some remedial
23 works, then I would expect them to be liable for it,
24 whether they do the work or somebody else does the work.

25 Q. So you were taking a fairly strict contractual --
26 adopting a very strict contractual position at the time?

1 A. Yes.

2 Q. When you did become aware of the mismatch problem, did
3 it occur to you that there might be more to this than
4 meets the eye? That this wasn't just a simple question
5 of some defects in the sense of rebar not being
6 connected to couplers, but there was actually a rather
7 fundamental problem that had arisen?

8 A. Well, of course, because it's the first time I've ever
9 seen anything like that before. And when we started
10 breaking out, the extent of it became known. It was
11 a big problem, yes.

12 Q. And the breaking out, getting ready for the
13 reconstruction, if you didn't know it by now, you
14 certainly knew it by then, that there was indeed this
15 mismatch problem, because the Lenton couplers would have
16 been revealed, presumably?

17 A. Correct, yes.

18 Q. So when you say, as you do, in your witness statement,
19 that there was little support for what Wing & Kwong were
20 saying to you in their letters, the existence of the
21 mismatch does indeed, does it not, lend some support to
22 what they were saying?

23 A. No, I don't accept that, because, again, they are
24 responsible -- they have a duty of care for the work.
25 They are responsible to install the works in accordance
26 with the requirements. If there's reasons for not doing

1 it, they should advise us in writing why.

2 Q. Because if one looks at it in this way, as a matter of
3 fact, with the rebar that Leighton supplied Wing & Kwong
4 with, they couldn't fulfil that obligation, could they,
5 their contractual obligation to connect the rebar to the
6 couplers? It was simply impossible, was it not?

7 A. I'm not aware that Wing & Kwong requested the rebar.
8 I would expect the sub-contractor to request what rebar
9 or what bits of materials he needs and by when to fulfil
10 his role.

11 Q. But there was no way that Wing & Kwong knew at the time
12 that they needed to request tapered threaded rebar as
13 opposed to parallel rebar, was there?

14 A. Why not? They could go and have a look on site.

15 Q. It wasn't until they discovered and opened up -- when
16 the Gammon concrete had been removed and the Lenton
17 couplers had been exposed, it was only at that point
18 that everybody knew. I mean, not even your engineer,
19 Mr Lai, apparently, knew that the Lenton couplers were
20 there. That's right, isn't it?

21 A. It appears to be the case, yes.

22 CHAIRMAN: Could you tell me, did you at about this time
23 discover that there was no RISC form or forms in regard
24 to the stitch joints?

25 A. It would have been around -- I can't remember the time
26 but it would have been around May -- March time,

1 I think, it was becoming evident.

2 CHAIRMAN: And were you able to ascertain who from MTR had
3 been responsible together with Henry Lai for inspections
4 of the stitch joints?

5 A. There were I think two inspectors, I don't recall their
6 names, associated with that area. I don't recall the
7 names. I know there was, I believe, two inspectors from
8 MTR there.

9 CHAIRMAN: Thank you.

10 COMMISSIONER HANSFORD: Just following on from that --
11 because presumably one of the questions that you or your
12 team would have been raising would have been, "Who
13 inspected this"; is that right?

14 A. We were asking those questions from our side. I didn't
15 ask MTR those questions. Internally, we were asking
16 those questions, yes.

17 COMMISSIONER HANSFORD: Right.

18 MR PENNICOTT: So in and around February, when the
19 investigations were being carried out, the opening-up
20 was being done, it didn't occur to you at that stage to
21 say, "Where are the relevant RISC forms for these stitch
22 joints"?

23 A. Well, again, the priority was to ascertain the extent of
24 the problem and get on with the work and rectify it,
25 because we were under a lot of pressure to get that done
26 quickly.

1 Q. So the RISC forms sort of came afterwards?

2 A. Later.

3 Q. Some months later. Okay.

4 Then that perhaps goes back to where I started this
5 afternoon: that had a thorough and rigorous
6 investigation been carried out and a detailed report
7 prepared, then this all might have been picked up in
8 that context, had it been done?

9 A. Yes.

10 Q. After the backcharge notice had been sent, you received,
11 I think, another letter from Wing & Kwong. It's at
12 EE290.

13 There is a specific reference in this letter,
14 towards the foot of the page, Mr Kitching, to the
15 difference between the parallel threads and taper-cut
16 threads; do you see that?

17 A. Yes, I do.

18 Q. So there's no doubt that by this date, 26 February, the
19 mismatch, either through Wing & Kwong's letters or the
20 investigations that have been carried out, was well
21 known to you and everybody else, presumably?

22 A. Correct.

23 Q. As I said earlier, after receiving either the
24 23 February letter that we looked at earlier and/or
25 this -- certainly after this letter, you spoke to Henry
26 Lai again?

1 A. Around that time, yes.

2 Q. You say that he gave you a similar response to your
3 previous discussion?

4 A. Correct.

5 MR PENNICOTT: Thank you very much, Mr Kitching. I have
6 nothing else.

7 WITNESS: A pleasure.

8 MR PENNICOTT: There may be others who do.

9 CHAIRMAN: Just so that I understand, my understanding at
10 the moment is that the issue of the different couplers,
11 the Lenton couplers and the BOSA couplers, was a matter
12 which would, under normal circumstances, have been
13 identified at early interface meetings.

14 A. Correct.

15 CHAIRMAN: And having been identified, the information would
16 have been passed on to junior staff who would be
17 responsible for inspections and the like?

18 A. That's what -- you would expect that to happen, yes.

19 COMMISSIONER HANSFORD: And indeed ordering materials?

20 A. Absolutely, if we were to provide the materials, we
21 would, yes.

22 CHAIRMAN: So you had a situation here where it appears at
23 the moment -- and this is outside of your remit
24 of course -- but it appears that that information didn't
25 get down certainly to Henry Lai. And once you had
26 discovered the problem in the stitch joints, one of the

1 documents which may have assisted to determine matters
2 would have been looking at the RISC forms?

3 A. Correct.

4 CHAIRMAN: And the papers that accompany the RISC forms,
5 saying, for example, "non-connection here but
6 rectified", that sort of thing?

7 A. Correct. That's the purpose of that process, yes.

8 CHAIRMAN: But there weren't any.

9 A. No, there were not. Very few.

10 CHAIRMAN: All right. Are you aware of the fact that later
11 there was some problem in actually identifying who from
12 MTR had been responsible? That's as we understand it.
13 We may be disabused shortly. But it was difficult to
14 trace who had been responsible for doing the inspections
15 on the MTR side.

16 A. I wasn't fully aware of that. I knew that there were
17 supposed to be some inspectors allocated to that area.
18 I wasn't aware there was a problem of identifying who
19 they were.

20 CHAIRMAN: Okay. Thank you very much.

21 WITNESS: A pleasure.

22 Cross-examination by MR TSOI

23 MR TSOI: Mr Kitching, I act for Wing & Kwong. I do have
24 some questions for you.

25 Can I just ask you to cast your eye back to
26 paragraph 9 of your first witness statement, which is at

1 CC6488.

2 A. Yes.

3 Q. I'm not sure if you can recall now, but I think you've
4 been asked this question by Mr Pennicott just now: did
5 this conversation with Henry Lai we see at
6 paragraph 9 -- did that take place before or after the
7 NCR on 9 February was issued?

8 A. I can't recall.

9 Q. You can't recall.

10 If I can take you to the Wing & Kwong letters that
11 you have just been shown. The first one I want to talk
12 to you about is the one on 23 February 2018.

13 A. 277?

14 Q. Sorry, the page number is 277, that's correct.

15 In this letter, if you look at paragraph 2, the
16 engineer, Henry Lai, has been named.

17 A. Correct.

18 Q. Although you don't recall whether it was after this
19 letter or the one on the 26th that you spoke to Henry
20 Lai, but when you did speak to him about the letters of
21 23 and/or 26 February, did he tell you in the
22 conversation that he knew about the mismatch problem?

23 A. No, he did not.

24 Q. I'm asking you because last Friday he told us that he
25 knew about the mismatch problem as early as when the NCR
26 was issued on 9 February. Did he ever tell you that

1 when you met him around 23 or 26 February?

2 A. I don't recall. The questioning I asked Henry is more
3 along the lines of "Do we know why it happened, what
4 happened?" Not so much about the mismatch or the
5 alignment.

6 Q. In this meeting with Henry around 23 or 26 February, was
7 anyone else in the meeting? Was it just you and him?

8 A. I don't recall. I don't recall.

9 Q. Did you show Henry these letters from Wing & Kwong?

10 A. No, I did not.

11 Q. Sorry?

12 A. No, I did not.

13 Q. You did not? So what did you ask him when you met him?

14 A. I asked him if he could explain why we think we've got
15 these couplers which are not connected.

16 Q. I'm sorry, can you --

17 A. I asked him why we think we have these couplers or do we
18 know how we've got to a position where we have
19 unconnected couplers, because my priority was to try to
20 ascertain the extent and what we needed to do to
21 reconstruct the stitch joints.

22 Q. Yes. There's a point I don't quite understand yet, but
23 can I ask you, by the time of 26 February -- if you can
24 just look at that letter. We find that at page EE290.
25 This letter contains very serious allegations against
26 Henry Lai. Is that not right?

1 A. It would appear to, yes.

2 Q. I'm sorry?

3 A. Yes, it would appear to.

4 Q. But you didn't think to show Henry or to tell him what
5 serious allegations have been made against him?

6 A. At that time, no, I did not.

7 Q. When you received the letter on 26 February, did you
8 talk to Joe Tam again?

9 A. I don't recall. I don't believe I did, no.

10 Q. Because at this point, you've made clear just now that
11 around 23 February you knew about the mismatch problem.
12 You just said.

13 A. Yes.

14 Q. Did you tell Henry that there was a mismatch problem
15 around that time?

16 A. I think it was pretty evident there was a mismatch
17 problem without having to tell anyone.

18 Q. But you did not talk to Joe Tam about it?

19 A. I can't remember. I don't think I did, no.

20 Q. When you talked to Henry, did he react to the mismatch
21 problem?

22 A. Yes, he did.

23 Q. Was he shocked? What happened?

24 A. He was visibly extremely upset, and this is why I didn't
25 want to really get into this business of the letters
26 because he's a junior engineer, very young engineer, and

1 I didn't see the -- getting any merit from worrying him
2 any more, because he was visibly upset and he was for
3 a number of weeks after we understood the gravity of the
4 situation.

5 Q. Yes, but this is an area which Henry was supposed to
6 have inspected.

7 A. Correct.

8 Q. Did you enquire with him why he missed the mismatch or
9 anything like that?

10 A. I asked him how are we in a situation where there
11 appears to be couplers or are couplers which are not
12 connected, and the answer he gave me was he could not
13 remember or he was not aware.

14 CHAIRMAN: Did you sort of revisit this later, when the full
15 extent was understood, that is the full extent of the
16 mismatch, and also the failure to properly connect
17 rebars?

18 MR PENNICOTT: Sorry, was that revisit with Henry Lai?

19 CHAIRMAN: Sorry, with Henry Lai.

20 A. I had a number of conversations with him, I can't
21 remember how many, but they were really informal
22 discussions and, as I say, trying to coax out from him
23 how we think we got to this situation. But again it was
24 always he couldn't remember or did not know.

25 MR TSOI: Yes. Now, by this time, this is 26 February, you
26 knew yourself about the mismatch and Henry knew about

1 the mismatch; that's right, isn't it?

2 A. It would appear so, through the letters, yes.

3 Q. Can I then take you to paragraph 16 of your witness
4 statement, which is at CC6489.

5 A. Yes, I have it.

6 Q. There, I think you are talking about the Wing & Kwong
7 letters of the 23rd and 26th that we just looked at, and
8 you say this:

9 "I formed the view at that time that Wing & Kwong's
10 allegations were not credible."

11 Do you see that?

12 A. I see that.

13 Q. But we know, at the very least, that what Wing & Kwong
14 has been saying to you about the mismatch, you knew that
15 was true, did you not?

16 A. At this -- it became evident at this time, yes.

17 Q. Yes. But they have informed you about the mismatch on
18 the 26th at the latest.

19 A. Yes, but I understand this is talking about the
20 allegations of Henry telling them to do something, which
21 is what I'm talking about here, not whether there's
22 a mismatch or not.

23 Q. Yes, but I'm talking about the mismatch. So, by the
24 26th, you knew about the mismatch; that was true?

25 A. Correct.

26 Q. So at least that part of what Wing & Kwong was telling

1 you is in fact true?

2 A. Correct.

3 Q. But you formed the view that Wing & Kwong's allegations
4 about Henry instructing them to screw in a parallel
5 rebar into a tapered coupler -- you think that was not
6 credible; is that right?

7 A. True.

8 Q. You asked Henry about that?

9 A. Yes.

10 Q. What did he say?

11 A. He did not recall any conversation along the lines of
12 asking them to do -- not screw them in or put them in as
13 best they can. He didn't recall or know anything.

14 Q. He did not recall?

15 A. Mm-hmm, any conversation like that.

16 Q. Because, by this stage, again, this is a very serious
17 allegation against Henry. Apart from asking Henry Lai,
18 did you ascertain with anyone else about this
19 allegation? Did you investigate the matter?

20 A. Well, like we've established before, there was no
21 thorough investigation done. The only people I spoke to
22 would have been Henry, occasionally, and Joe Tam.

23 Q. So do I understand from your evidence then, therefore,
24 you did talk to Henry about the mismatch issue?

25 A. I asked Henry why he thinks we've got into a situation
26 where couplers were not connected. His answer was,

1 "I didn't know -- understand or I can't remember."

2 That's the sort of conversation we had. I didn't
3 specifically ask him about mismatched couplers or wrong
4 types of couplers.

5 Q. So he did not talk to you about the mismatch problem?

6 A. I'm talking about couplers not being connected. If
7 that's a mismatch, then -- that's what I spoke about.

8 Q. I'm trying to be very specific here. Did Henry talk to
9 you about the mismatch, the Lenton couplers?

10 A. I don't think so. I don't recall.

11 Q. Did Colin Mitchell talk to you about the mismatch
12 problem?

13 A. I don't recall.

14 Q. Because Henry told us last Friday that he spoke to Colin
15 Mitchell. That's why I'm asking you. So you don't
16 recall Colin Mitchell asking you?

17 A. No.

18 Q. We cast your eye to paragraph 17 of your witness
19 statement. I think there you are referring to the reply
20 Leighton made to Wing & Kwong's letter on the 26th,
21 which is also on the 26th, and we can find that letter
22 at page EE293. Right?

23 A. Yes.

24 Q. In the letter, if you go to the latter part of that
25 page, EE293, the letter says this:

26 "It has been established that the sub-contractor has

1 failed to complete the sub-contract works in accordance
2 with the sub-contract by correctly affixing the rebar to
3 the couplers."

4 Do you see that?

5 A. Correct. I see it, yes.

6 Q. But do you not agree that if one has a parallel rebar,
7 it is not possible to fix that or to screw that into
8 a Lenton coupler? You accept that, don't you?

9 A. I accept that, yes.

10 Q. So has it really been established that it was the
11 sub-contractor who failed to complete the sub-contract
12 at that stage?

13 A. I believe so, because it's clear it's not fixed in
14 accordance with the sub-contract.

15 Q. At paragraph 17 of your witness statement, you say this:

16 "On or around 26 February 2018, Leighton sent
17 a response to Wing & Kwong's letters [that's the one we
18 just looked at]. This was drafted by Leighton's
19 commercial team on the project."

20 And this is the part:

21 "At that time, we did not address Wing & Kwong's
22 allegation that they were acting on instructions because
23 it was irrelevant and it would not have been productive
24 to debate this matter with them."

25 Do you see that?

26 A. Yes, I see that.

1 Q. As a responsible company, construction company, did you
2 not want to investigate the allegation and find out the
3 truth, whether it was in fact Henry Lai who instructed
4 Wing & Kwong to screw in the parallel rebars into the
5 Lenton couplers?

6 A. Our position at the time was that Henry was a very
7 junior engineer and it didn't seem credible that a very
8 experienced sub-contractor would do something which he
9 knew was wrong.

10 Q. But that's not my question, because, you see, this --
11 Henry Lai holds a very important position. He inspects
12 works. He has to pass the rebar fixing works, the
13 hold-point checks and all that; right? So he's
14 an important man in terms of the inspections?

15 A. Correct.

16 Q. And the allegation by Wing & Kwong went to the very core
17 of his professional integrity; right?

18 A. Correct.

19 Q. You agree with that?

20 A. Agree, yes.

21 Q. So surely, as a responsible construction company, you
22 would have some interest to find out whether the
23 allegations were true?

24 A. At that point of time, around the end of February, where
25 everybody was extremely busy trying to demolish and
26 reconstruct, for which Henry was involved, I guess it

1 was just something that wasn't thought about at the time
2 and perhaps we'd have picked it up later, but at that
3 time it wasn't on the forefront of our mind. We just
4 wanted to fix the problem.

5 Q. But it wasn't irrelevant. This was a very serious
6 matter, would you not agree?

7 A. The sub-contractor should have completed the works in
8 accordance with the sub-contract drawings,
9 specifications, et cetera. Clearly that's not been
10 done.

11 Q. I understand your position about the sub-contractor's
12 work, but I am asking about the allegations against
13 Henry Lai. This was a very important matter, a serious
14 allegation has been made to the very core of this man's
15 professional integrity.

16 A. Correct.

17 Q. So it was an important matter?

18 A. This is an accusation against an extremely junior
19 engineer who may or may not have understood what was
20 happening, so this is why we discounted it at the time.

21 Q. But it wasn't irrelevant, surely? You have an interest
22 to find out whether that is in fact true, or did you
23 just not --

24 CHAIRMAN: I think the question has been answered. I think
25 my understanding of it is that, yes, they became aware
26 of the allegations through the mail, but they didn't

1 think it was credible because you had an experienced
2 sub-contractor and you had a very junior engineer who
3 may not fully have understood the complexities of what
4 was happening.

5 MR TSOI: Sure.

6 CHAIRMAN: And the base rule was that the sub-contractor had
7 an obligation to complete the rebar fixing to a certain
8 standard.

9 A. Correct, yes, precisely.

10 MR TSOI: Henry Lai was promoted, we know, in April 2018.

11 A. Correct.

12 Q. Before he was promoted, did you do any steps, did you do
13 anything, to investigate the allegations that were made
14 against him?

15 A. Henry's promotion process was started way before
16 I joined the project and I wasn't aware he was promoted
17 at that time.

18 Q. So you are not sure?

19 A. Not sure about what?

20 Q. About whether there were investigations about the
21 allegations against him before he was promoted?

22 A. I believe not, no.

23 Q. You've seen the Wing & Kwong/Leighton -- I'm not going
24 to take you through all of them, but essentially just
25 one of them, perhaps. On 28 February, Wing & Kwong
26 wrote Leighton another letter, which we can find at

1 page EE301, again mentioning -- and this time with some
2 pictures -- the issue with parallel rebars and Lenton
3 couplers.

4 I think this goes on throughout May and June, and in
5 June we see another letter. Perhaps if you can just
6 turn to that to refresh your memory. That's 1 June at
7 page EE308, essentially repeating what was said.

8 A. Mm-hmm.

9 Q. Then, on 23 July, there was a reply from you -- from
10 Leighton to Wing & Kwong. We can see that at
11 page EE312.

12 So, essentially, that was the main exchanges between
13 Leighton and Wing & Kwong. I just want to show you
14 that, just in case you want to refer back to them.

15 There was a time where MTR asked you about the
16 sub-contractor; is that not right? I can take you to
17 that. MTR wrote you a letter on 27 July 2018. We can
18 find that at page BB5073.

19 A. Okay.

20 Q. Perhaps you can just read paragraph 2 together. MTR
21 says:

22 "This letter relates specifically to: (i) the
23 discovery of defects at the NAT stitch joints; (ii) the
24 remedial works which have been completed to the NAT
25 stitch joints to date; and (iii) the need for further
26 investigations including any non-destructive testing of

1 your works in the NAT that may potentially have similar
2 defects to those discovered at the three stitch
3 joints ..."

4 Do you see that?

5 A. Yes.

6 Q. The next paragraph:

7 "I require you to provide information to enable me
8 to gain a full understanding of the NAT issues and
9 compliance with your obligations under the contract, and
10 so that any necessary further instructions, including
11 but not limited to further investigations and searches
12 for defects, and/or for further testing or taking of
13 samples, may be given under the contract."

14 Do you see that?

15 A. Yes.

16 Q. The next part then talks about the clauses. Then the
17 next bit:

18 "To this end, please provide the following", and
19 point 4 was this:

20 "Details of actions taken against responsible
21 sub-contractor(s) in respect of the NAT issues".

22 Do you see that question?

23 A. Yes.

24 Q. If you turn over the page, point 5 was:

25 "Relevant reports produced or investigations
26 undertaken in relation to the NAT issues".

1 We can find the Leighton reply at page BB5081,
2 specifically to the question number 4 that we just read,
3 the actions taken against the responsible
4 sub-contractors. You can find that answer at
5 page BB5083. You gave this answer:

6 "Following the receipt of [NCR95 and 96] in February
7 and March 2018 related to the defective stitch joint
8 works, an internal non-conformance was raised [and you
9 gave the number] on 19 March 2018. A meeting was also
10 held with the senior management of Wing & Kwong, the
11 rebar fixing sub-contractor responsible for the NAT
12 works. After the meeting it was decided that Wing
13 & Kwong would not be carrying out any further work on
14 the project, including the remedial work required to
15 rectify the defective stitch joints."

16 Now, in this answer, there is no reference to the
17 backcharge notice you sent to Wing & Kwong.

18 A. Yes.

19 Q. And there's no reference to Wing & Kwong's reply to the
20 backcharge notice that you sent them.

21 A. Yes.

22 Q. Therefore, Wing & Kwong's response that it was
23 Leighton's Henry Lai who instructed them to fix the
24 parallel rebars into the Lenton couplers, that was not
25 made known to MTR?

26 A. Correct.

1 Q. Of course, you may think that Wing & Kwong's answers to
2 you may not be relevant, but MTR is asking you what
3 actions you took against the sub-contractor, is that not
4 right?

5 A. Yes.

6 Q. For the purposes of investigating this issue?

7 A. Correct.

8 Q. Would you not agree that the answer you gave to MTR,
9 without disclosing the exchanges between Wing & Kwong
10 and yourself, would have kept MTR in the dark about what
11 was going on?

12 A. I don't believe so, because there would have been many
13 discussions with MTR. Again, we were just maintaining
14 a contractual position between Leighton and the
15 sub-contractor, which normally MTR wouldn't really be
16 that interested in, in a dispute or backcharge between
17 us and a sub-contractor.

18 Q. Well, I'm asking you because the question from MTR was
19 quite specific. They are asking you what actions you,
20 Leighton, had taken against the sub-contractor, in the
21 context of investigating the stitch joints. It was
22 quite specific; right?

23 A. Yes.

24 Q. So they are not disinterested about the sub-contractor.
25 They are asking specifically about the actions you took
26 against the sub-contractor.

1 A. Correct.

2 Q. So I go back to my question: would you not agree that if
3 you don't disclose to MTR what has been going on between
4 you and Wing & Kwong, they will be kept in the dark and
5 they can't investigate this matter themselves?

6 A. They can surely investigate the matter themselves.

7 Q. No, but investigating the allegation that has been made
8 by Wing & Kwong, because they don't know an allegation
9 has been made against Henry Lai yet, have they?

10 A. In this letter, no, they don't.

11 Q. So, by this answer, would you agree that it is not
12 a full and accurate answer or response to MTR?

13 A. This is what we responded at the time.

14 Q. So it's not full or accurate?

15 A. This is what we responded at the time.

16 MR TSOI: I have no further questions.

17 CHAIRMAN: Thank you.

18 Mr Boulding?

19 MR BOULDING: No questions from us, sir. Thank you.

20 MR CHOW: I have some questions for Mr Kitching, but I see
21 that it is 3.21. I wonder whether Mr Chairman would
22 prefer to --

23 CHAIRMAN: 10 minutes?

24 MR CHOW: Sure.

25 CHAIRMAN: Thank you. Ten minutes.

26 (3.21 pm)

1 (A short adjournment)

2 (3.36 pm)

3 Questioning by THE TRIBUNAL

4 CHAIRMAN: Sorry. Just, Mr Chow, a moment or two. Thank
5 you very much.

6 Mr Kitching, I'm interested in the robustness and/or
7 the frailty of the RISC form process. As I understand
8 it, with the work we are looking at, the stitch joints,
9 there would have been at least two hold points; okay?

10 A. Mm-hmm.

11 CHAIRMAN: Now, it appears that there are no RISC forms in
12 respect of those hold points, and in fact the problem
13 has extended to other areas. The evidence so far that's
14 been indicated is that MTR wrote what in common parlance
15 may be called some snotty notes, saying, "Where are the
16 RISC forms? We can't continue to do this on a colleague
17 sort of basis."

18 My first question is: did that come to your notice,
19 that there was a severe shortage of RISC forms, that
20 there was a failure to produce these RISC forms?

21 A. Well, obviously through this Commission process it's
22 become evident there's been a failure in the RISC form
23 process, yes.

24 CHAIRMAN: Yes, but at the time, as a result of what
25 I termed, perhaps inappropriately, the snotty notes, did
26 it come to your notice?

1 A. I don't think -- at the time -- as I say, we established
2 that there was missing RISC forms after the stitch joint
3 issue became evident. That was in, I forget in relation
4 to the date of the letter, but that would have been in
5 March/April, I can't remember, of 2018. Prior to that,
6 I wasn't aware of issues with RISC forms.

7 CHAIRMAN: Okay. Can I ask you this. I appreciate
8 of course that sub-contractors who work with Leighton
9 and with MTR will get to know the system, but would it
10 be correct to say that sub-contractors themselves don't
11 have to countersign the RISC forms?

12 A. I believe that's the case, yes. It's just Leighton and
13 the MTR.

14 CHAIRMAN: And a sub-contractor may be responsible for
15 fixing something if the inspectors don't like it, but
16 leaving that aside, they play no role in that inspection
17 process?

18 A. In the RISC form process, no, they don't.

19 CHAIRMAN: So you could have a situation, theoretically,
20 where one person comes along, hasn't filled out a RISC
21 form, and simply says, "Okay, I'm here to have a look;
22 yes, that's fine", and then goes to the next
23 sub-contractor -- the concrete pourer for example -- and
24 says, "Okay, you can continue"?

25 A. You could have that scenario, I would imagine, yes. It
26 depends who the person saying "okay" is.

1 CHAIRMAN: Of course. I'm not suggesting this was done by
2 Mr Henry Lai, please don't get me wrong. I'm looking at
3 the overall system to see, as I said at the beginning,
4 its robustness and/or its frailty, and I suppose what
5 concerns me is that you can have a situation where one
6 inspector could just decide, if he's rushed or she's
7 rushed, for example, just to go along on their own and
8 look at something and say, without having a RISC form,
9 without calling MTR, give the okay on something, then go
10 and pass on the okay to the concrete pourer, and within
11 a couple of days any defective rebar connections are
12 covered in concrete, and what the parties are left with
13 is a dispute between MTR and Leighton, just between
14 those two parties, as to what's happened to the RISC
15 forms.

16 A. You are right. My opinion is that the RISC form process
17 in today's world is antiquated and there's a big
18 reliance on WhatsApps and emails which are probably not
19 as regulated as a more formal system would be. So, for
20 a fast-track highly complex job, the RISC forms, they do
21 take time to do, sometimes they are complicated, and
22 they are expected to be submitted days in advance, where
23 work may not be finished days in advance, because we
24 tend to work almost to just-in-time delivery. If it's
25 finished, we've got to pour the concrete, we can't wait
26 two days for it to be inspected.

1 CHAIRMAN: Absolutely.

2 A. That's my personal opinion. There's been a reliance on
3 WhatsApps with the modern technology, and -- I wouldn't
4 say that perhaps someone has gone and said, "Go and pour
5 the concrete." I'm sure there would have been
6 a WhatsApp message or some sort of communication of some
7 sort.

8 CHAIRMAN: But do you keep records of those WhatsApps?

9 A. They are more difficult to keep records of, because --

10 CHAIRMAN: Unless they are fed into some pre-set system?

11 A. Correct, which wasn't set up. The teams tend to have
12 their own WhatsApp group or however it works between the
13 inspectors and the engineers and they just say, "Here's
14 a photograph of something, okay, please proceed"; that's
15 kind of how it goes.

16 CHAIRMAN: It's of interest, and again please don't
17 misunderstand me, but I'm not coming at this in
18 a condemnatory fashion, more just to sort of enquire,
19 but the impression I got as a complete layperson from
20 some of the earlier witnesses who were with Leighton was
21 that they placed great deal of store by the RISC
22 process; they were proud of it, and I'm not saying they
23 shouldn't be proud of it, I'm just saying that there
24 appear to be -- a cynic, and I'm not a cynic, but
25 a cynic might say they were almost self-satisfied with
26 it. But it would seem that perhaps you and certain

1 others may have a view towards more modernised systems,
2 quicker, more certain.

3 A. Absolutely. I think more modern systems are the way to
4 go. I mean, it's better efficiency. It's realtime, you
5 know. Everything is realtime these days, rather than
6 having to wait many days for forms to be submitted,
7 forms to be approved and come back.

8 CHAIRMAN: How long would it take normally? So you get
9 a request for the hold-point inspection of the rebar
10 fixing that's done. Somebody has now got to fill out
11 the form, the RISC form, and then has got to --

12 A. If you follow the form to the letter, I can't remember
13 the time but I think it's something like you need to
14 notify them I think it's 48 hours in advance of the
15 inspection, so the form should be filled in 48 hours in
16 advance. Typically, on a fast-track project, we would
17 still be fixing rebar 48 hours in advance of a pour.
18 Then, when the pour comes, is inspected, submitted to
19 MTR, it will be a number of days before it comes back
20 ticked "approved". So it could be easily a week to go
21 through the process, possibly longer.

22 CHAIRMAN: Meanwhile --

23 A. Meanwhile we're standing doing nothing, if you follow
24 the process, yes.

25 CHAIRMAN: And time is money?

26 A. Absolutely.

1 CHAIRMAN: Thank you. It's helped me just to get an idea.

2 A. A pleasure.

3 COMMISSIONER HANSFORD: Before Mr Chow stands up -- sorry
4 about this, but it's a convenient juncture -- can I ask
5 you on a different point, Mr Kitching. You had
6 an exchange with Mr Tsoi about the letters between Wing
7 & Kwong and yourselves and also the letter between
8 yourselves and MTR, and in the letter with MTR you made
9 some reference to Wing & Kwong, but is it your position
10 that the relationship, the commercial relationship,
11 between Leighton and Wing & Kwong is not a matter for
12 MTR?

13 A. It's entirely a cost project, which means it's open
14 book, so eventually MTR will see it all at that time.
15 I forget the reason, to be honest, for that response,
16 but at that time we were just trying to maintain
17 a strict contractual position between us and MTR,
18 because we could be getting into a situation where we
19 would be exposed to what we call disallowed costs, where
20 Leighton will have to actually pay for it themselves
21 rather than going through target cost process.

22 COMMISSIONER HANSFORD: That's what I was getting at really,
23 because as I understand it the target cost contract
24 nature of this makes that relationship, that commercial
25 relationship, somewhat different.

26 A. Very different, yes.

1 COMMISSIONER HANSFORD: So, therefore, MTR does have a need

2 to understand those transactions and commercial

3 discussions between yourselves and sub-contractors?

4 A. Yes, they should, yes.

5 COMMISSIONER HANSFORD: Thank you.

6 CHAIRMAN: Mr Chow, apologies for interrupting you, but

7 that's helped both of us. Thank you.

8 Cross-examination by MR CHOW

9 MR CHOW: Good afternoon, Mr Kitching.

10 A. Good afternoon.

11 Q. I represent the government and I have a few questions

12 for you.

13 Mr Kitching, do you recall that your counsel,

14 Mr Shieh, took you to an organisation chart --

15 A. Yes.

16 Q. -- of Leighton?

17 A. (Nodded head).

18 Q. Do you need me to call up that organisation chart before

19 I ask the question?

20 A. Yes, please.

21 Q. Okay. That would be in bundle CC2, page 529.

22 In the middle, at the very top, right under "MTRC",

23 we see that you are the project director --

24 A. Correct.

25 Q. -- of the project in question; right?

26 A. Yes.

1 Q. What I don't quite understand is your relationship at
2 that stage with Mr Karl Speed and Anthony Zervaas,
3 because both of them are put right next to you, and
4 I would like to know a little bit more about the
5 internal organisation within Leighton.

6 Now, at that stage, my understanding from Leighton's
7 website is that Mr Speed was the managing or the general
8 manager of Leighton Hong Kong; right?

9 A. Correct.

10 Q. So, in Leighton's hierarchy, his position is above you;
11 is that right?

12 A. Correct.

13 Q. And how about Mr Zervaas?

14 A. Mr Zervaas is what we call operations manager.

15 Q. So, under Leighton's hierarchy, he is also above you; is
16 that right?

17 A. Correct.

18 Q. But at that stage both of them would not be involved in
19 the day-to-day operation of the project?

20 A. Correct.

21 Q. Now, I have some understanding of how some of the
22 international contractors operate and I would like to
23 ask you a few questions to see whether Leighton operates
24 in a similar fashion.

25 A. Okay.

26 Q. Is it true that a project director is the one who was

1 overall responsibility of a project?

2 A. Correct, absolutely.

3 Q. And above a project director, for instance in Leighton's
4 organisation, you will still have senior management
5 above a project director?

6 A. Yes.

7 Q. And because the senior management is not involved in the
8 details of the operation of the project --

9 A. Mm-hmm.

10 Q. -- there must be a management system within, in the case
11 of Leighton, which requires the project director to
12 report to the senior management on how well or how poor
13 a particular project is going?

14 A. Correct.

15 Q. Not only in terms of progress or programme but also the
16 financial aspects of the project?

17 A. Absolutely, yes.

18 Q. So that reporting system has to be -- or the report has
19 to be made on a regular basis, for obvious reasons;
20 right?

21 A. Correct.

22 Q. Would it be a monthly update to the senior management?

23 A. It depends on the situation. I mean, we generally have
24 monthly reviews for each project which discuss a whole
25 wide range of issues, but on serious issues, such as
26 this, we could be reporting daily or by day, every other

1 day, depending on the context and the seriousness of the
2 issue.

3 Q. And I would imagine that the report would be in writing
4 rather than speaking over the phone?

5 A. A combination of both, yes.

6 Q. So there are reports in writing as well?

7 A. Yes.

8 Q. And, I can imagine the report will cover the progress of
9 the work?

10 A. Correct.

11 Q. Major problems encountered on site?

12 A. Correct.

13 Q. That may have an impact on the financial position of the
14 project, for example?

15 A. Yes.

16 Q. And for obvious reasons, that has to be done because if
17 money is to be spent on certain things, the senior
18 management has to know where the money goes?

19 A. Yes, correct.

20 Q. In the case of the defects in the stitch joint, I can
21 imagine that this problem would have extensive financial
22 implication to Leighton?

23 A. A significant amount of money was spent repairing the
24 stitch joint, yes.

25 Q. And there would be programming implication as well
26 because that would inevitably cause delay to the

1 completion of the project?

2 A. Correct.

3 Q. And hence there would be financial impact on the project
4 as a whole as well, because, as I understand it, there
5 is liquidated damages provision in the contract that
6 Leighton have with MTRC?

7 A. Correct.

8 Q. Someone has committed a mistake in the sense that
9 couplers for the stitch joint have not been properly
10 connected, and that has caused financial loss to
11 Leighton?

12 A. Correct.

13 Q. So that has to be reported back to the senior management
14 of Leighton?

15 A. Correct.

16 Q. So I would imagine, as a project director responsible
17 for the project, and in particular you were not involved
18 in the original stitch joint execution work --

19 A. Correct.

20 Q. -- when you took up the position as the project
21 director, with the discovery of these -- is it fair for
22 me to describe it as a serious mistake in the
23 construction work?

24 A. It's a big issue, yes. I wouldn't use the word
25 "mistake", but yes.

26 Q. So I would imagine that this would be one of the subject

1 matters that you think has to be reported back -- up to
2 the senior management?

3 A. Of course, yes.

4 Q. Because money would be spent on rectification work?

5 A. Correct.

6 Q. And there would be impact on the programme, hence the
7 completion of the works?

8 A. Well, there may be other things affecting the completion
9 of the work, not just that. There were other works
10 going on. So if the stitch joint became a critical part
11 of the work, yes. If it didn't, then it may not become
12 a part of --

13 Q. Money-wise, you need to report back --

14 A. Sure.

15 Q. -- to your senior management so that you can justify the
16 spending; right?

17 A. (Nodded head).

18 Q. As a project director, I would imagine that earlier you
19 mentioned to the Commission that your focus at the time
20 was on the extent of the defects and whether remedial
21 works, if so the extent of the remedial works to be
22 carried out?

23 A. Correct.

24 Q. But I would imagine that the financial implications
25 would be one of your major concerns as well at that
26 stage?

1 A. It was a concern but it wasn't the overriding concern
2 because it was a recognition -- work just had to be
3 done.

4 Q. So that was one of the concerns that you had at the time
5 as well?

6 A. Of course.

7 Q. Which I can fully understand. So, as a project
8 director, it is also, I can imagine, your duty to seek
9 to recover the cost of rectification from whoever party
10 would be responsible for this defect?

11 A. Correct.

12 Q. And to do that you must carry out a thorough
13 investigation into the cause of the problem?

14 A. Correct.

15 Q. For instance, we see and we know that at that stage,
16 when these things happened, all that we see -- all that
17 we knew at the time was the water seepage and the
18 formation of a gap of 5 millimetres to 10 millimetres;
19 right?

20 A. Mm-hmm.

21 Q. So, quite naturally, the first question -- well, for
22 someone to start to look into the cause of the problem,
23 one would at least dig out the drawings first, to see
24 whether there is any design fault on the part of MTRC;
25 correct?

26 A. You could do that, yes.

1 Q. Was this done at that stage?

2 A. I don't recall.

3 Q. As a matter of common sense, we know that the stitch
4 joint was to be constructed after the two structures,
5 one on the contract 1111 side and the other, the North
6 Approach Tunnel that Leighton built, have to be
7 stabilised in terms of settlement; right?

8 A. Mm-hmm.

9 Q. So do you agree with me that the formation of a gap of
10 up to 10mm actually suggests that the two structures
11 have moved?

12 A. Yes, it does.

13 Q. So the fact that the couplers were not connected, if the
14 two structures haven't moved relative to each other, the
15 stitch joint itself, which is only 2 metre wide, was not
16 going to go anywhere? There won't be any gap if the two
17 structures that it connects did not move; do you agree
18 with me?

19 A. If it was constructed in accordance with the drawings,
20 it would not have moved, no.

21 Q. Yes. So the first thing that came to your mind should
22 be, well, perhaps there is some design fault on the part
23 of MTRC. Did it occur to you, so that you need to ask
24 someone to look into the design?

25 A. It didn't occur to me at that point, no, because as
26 I said the focus was on trying to establish the extent

1 of the problem, and then look at the best way to fixing
2 the problem.

3 Q. Now, when these things occur, have you had a chance to
4 look at the interface requirement set out in your
5 contract?

6 A. Sorry, say that again?

7 Q. Perhaps, in particular -- we now know that one of the
8 requirements in the interface requirements set out in
9 your contract is that the stitch joint should only be
10 built after the settlement of the structure has
11 stabilised.

12 A. There's a certain structural requirement, yes.

13 Q. You were aware of that?

14 A. Well, I know what stitch joints are. It's a common
15 thing, you know. There's a period of time when you have
16 to wait for certain things to happen before you can do
17 a stitch joint.

18 Q. Yes, and there is also a requirement in Leighton's
19 contract to monitor, to carry out monitoring work; are
20 you aware of that?

21 A. I'm not aware of that.

22 Q. Okay, so we can come to that later. You don't know if
23 the stitch joint was built after the structure on both
24 sides has stabilised; right?

25 A. I assume, because it was constructed, it was agreed that
26 it could have been constructed at the relevant time.

1 Q. In your investigation carried out after February 2018,
2 you have not asked anyone to look into this?

3 A. No, we have not.

4 Q. Mr Kitching, we have looked at -- during the course of
5 the evidence that we had last week, we looked at
6 a number of photos taken of the defective couplers
7 connection. They were attached to the three NCRs;
8 right? Do you have recollection of what the photos
9 show?

10 A. I have a recollection, yes.

11 Q. You mentioned to us earlier that when you first learned
12 about this, it was after a certain location on the
13 stitch joint were open, do you recall that, and it was
14 discovered that certain -- some of the couplers were not
15 connected?

16 A. Correct.

17 Q. And at that stage you also went down to site to have
18 a look for yourself of those couplers?

19 A. Yes.

20 Q. Would you agree with me that the kind of defects that we
21 see are something pretty obvious to just any engineer.
22 Even a graduate engineer, a junior engineer, would be
23 able to realise that there must be something wrong?

24 A. To someone who understands it, it would be pretty
25 obvious, but we didn't understand the reasons why they
26 were not connected. Maybe there were other reasons.

1 Q. Right. Now, after these defects were discovered, have
2 you gone back to look at the corresponding requirements
3 under the contract, regarding these couplers'
4 connection?

5 A. Sorry, I don't understand the question.

6 Q. Sorry, perhaps I will re-frame it.

7 Have you ever checked or looked at the acceptance
8 letter issued by Highways Department in relation to the
9 stitch joint?

10 A. I've seen the acceptance letter from the Buildings
11 Department where it stipulates the requirements for the
12 type I and type II couplers, yes.

13 Q. So you are also aware of the supervision requirement?

14 A. I am now, yes.

15 Q. But at that stage, how about in February 2018?

16 A. Well, I have now, because -- at that time and before
17 that time, no, I was not aware of the requirements.

18 Q. But I would imagine it would come quite natural for you
19 to at least ask your colleague as to who was responsible
20 to supervise this particular part of the work and to
21 inspect the work at that stage?

22 A. Yes, we did, and we established it was Henry who was
23 responsible.

24 Q. So who told you it was Henry Lai who was responsible for
25 this part of the work?

26 A. It was Colin Mitchell, I believe, because he was the

1 construction manager.

2 Q. Having looked at the type of defects and how serious and
3 obvious they are, it did not occur to you that Henry Lai
4 did not do his job properly?

5 A. It occurred to me that Henry was an extremely junior
6 engineer and may not have understood what needed to be
7 done with couplers, and obviously we were also
8 talking -- it was evident to me that it was an extremely
9 experienced sub-contractor who we would have thought
10 would have known better than to do something which was
11 knowingly wrong.

12 Q. So you would accept that an engineer, Henry Lai, may not
13 have the knowledge of how couplers should be installed?

14 A. Possibly. I mean, they are not a common occurrence,
15 couplers. I believe this was Henry's -- Henry had been
16 working in the industry for a relatively short amount of
17 time. He may not have come across couplers in that
18 short amount of time, so possibly he was not fully
19 aware.

20 Q. Don't you think that it's a matter of common sense that
21 if you see exposed thread, you would at least expect
22 that the thread should be properly screwed into the
23 couplers? We don't need experience of an engineer to
24 realise that.

25 A. Of course --

26 Q. The fact that there are threads, they are meant to be

1 screwed into something?

2 A. Of course. If you are an experienced person, you would
3 question it straightaway.

4 Q. How about Joe Tam? Joe Tam was the construction
5 manager --

6 A. Correct.

7 Q. -- have you asked him, "How come things like that could
8 have happened"?

9 A. Yes, we have had a discussion.

10 Q. And what did he say?

11 A. As we've said before, he was in a more senior position
12 so I wouldn't have expected him to have a day-to-day
13 presence right on the work face, because, being a more
14 senior position, that wouldn't be his role. So he
15 likely wouldn't have been aware or not known what was
16 going on.

17 Q. That's what he told you, he was not aware and he didn't
18 know why --

19 A. He said because he was in a senior position he did not
20 know.

21 Q. How about the one who supervised Henry Lai?

22 A. Joe Tam?

23 Q. So Henry Lai reported directly to Joe Tam?

24 A. I believe so, yes.

25 Q. And you just accept it as a complete answer; right?

26 A. Well, we did at the time.

1 Q. They all say, "I don't know, I have no idea"?

2 A. Everybody was saying that at the time, yes, and as
3 I said, my focus was to -- my focus at the time was
4 not -- perhaps incorrectly but not create a witch hunt.
5 We just wanted to get on and fix the work.

6 Q. So that was the conclusion of the investigation; is that
7 right?

8 A. It wasn't really an investigation. It was more of a few
9 discussions with Henry and Joe.

10 Q. So that is what you have reported back to your senior
11 management, that is --

12 A. Yes.

13 Q. -- how the work came about, nobody knows why it was done
14 that way and our staff simply say they don't know, "so
15 we'd better pay for the cost of rectification"? Is that
16 the position?

17 A. Well, we -- I was getting a lot of pressure from my
18 senior management to ask these questions, and I'm still
19 being asked these questions from my senior management.
20 So on one side -- the gravity of it was such that it was
21 recognised that it had to be fixed, so who paid for it
22 would be sorted out later. It was just -- the priority
23 was to get it fixed.

24 Q. So that there is a report in writing that you made to
25 your senior management in which you set out details of
26 these problems and the findings and about financial

1 implication; right?

2 A. It's not just one report. There's a number of things we
3 had to prepare. One was a brief overview of what the
4 problem was. We did prepare some budgetary estimates of
5 how much it would be to repair, to report to senior
6 management.

7 Q. Any question raised by your senior management?

8 A. Yes, of course, many.

9 Q. Can you share with us what --

10 A. They obviously, of course, want to find out how this
11 issue has come about; you know, find out who knew what,
12 who did what.

13 Q. Yes. So did you follow up on that?

14 A. Of course. This is the reasons for the discussions with
15 Mr Lai.

16 Q. So now we are more than a year after, so Leighton
17 decided just to drop this; Leighton is not going to seek
18 to recover the cost from any third party? Is that
19 right?

20 A. We are. We are pursuing both an insurance claim and we
21 will look at what action we can take against Wing
22 & Kwong.

23 Q. But so far no action has been taken?

24 A. Everything has been a little bit superseded by events
25 through the Commission and probably lost a bit of focus.

26 Q. Before I move on, can I just confirm with you -- now, we

1 know that part of the requirements of the Highways
2 Department in relation to the installation of couplers
3 is that you, Leighton, needs to designate quality
4 control coordinator to provide full-time supervision of
5 the installation of the couplers, and a checklist has to
6 be devised and details like date of inspection, who
7 inspected those couplers, have to be recorded in
8 a log book.

9 Can I just confirm with you, none of these have been
10 done by Leighton?

11 A. I'm not aware of what's been done prior to me getting
12 onto site.

13 Q. Right.

14 Mr Pennicott has explored with Mr Lai on the
15 different steps taken in the execution of the stitch
16 joint. I have counted the number and it appears to me
17 that there are altogether -- there are four joints
18 involved, three stitch joints, two on NSL --

19 A. Correct.

20 Q. -- one on EWL --

21 A. Yes.

22 Q. -- and there is a shunt neck joint?

23 A. Correct.

24 Q. Altogether, there are more than 20 hold points, hold
25 points for rebar checking or the pre-pour hold points as
26 well.

1 A. Mm-hmm.

2 Q. We had a similar problem that occurred in all these
3 joints, which means that whoever carried out the
4 hold-point inspection missed these kind of defects on
5 more than 20 occasions.

6 A. It would appear so.

7 Q. So we know that it was Henry Lai who carried out those
8 hold-point inspections. He admitted that.
9 Notwithstanding, you find it totally forgivable,
10 understandable; is that right?

11 A. Of course it's not forgivable, but you need to look at
12 the circumstances. If the guy is junior and has
13 genuinely not understood, it's completely different to
14 wilful neglect. So this is where we took it.

15 Q. Just now, you mentioned about -- when Mr Tsoi, counsel
16 for Wing & Kwong asked you about the promotion that
17 Leighton has given to Mr Lai two months after this
18 matter was discovered. Do you recall that?

19 A. Yes.

20 Q. And you explained that the process of promotion actually
21 started way before you took up the position as project
22 director?

23 A. Correct.

24 Q. I am curious to know what this process involved. Why
25 does it take months to get to the point when Henry Lai
26 was promoted in April? I recall that you joined -- you

1 took up the position as project director in September.

2 Just now you said very late August.

3 A. Yes.

4 Q. So it has taken almost eight months for this promotion
5 process to go through. Can you explain to us what sort
6 of work would be involved in this process?

7 A. Well, there would be an application made to give someone
8 a promotion. I believe in this case it was in --
9 I think it was in July of 2017. Then that would have to
10 go through approval to senior management. And
11 typically, in Leighton, we do our promotion cycle so
12 that the promotions happen in April of a particular
13 year. So that's why it would have happened like that.

14 Q. So even for a graduate engineer, a very junior engineer
15 as you described, it would take months to go through,
16 I would imagine, a slight promotion?

17 A. Yes, and there may have been conditions for his
18 promotion. He may have had to do something, achieve
19 something. I don't know the background. But it does
20 take a while.

21 Q. And this promotion process, once started, couldn't be
22 stopped, no matter what happened?

23 A. Of course. It can be stopped.

24 Q. It could be stopped?

25 A. Yes.

26 Q. Who would be in a position to stop that process?

1 I imagine you as project director would be in a position
2 to stop it?

3 A. Could be. Yes.

4 Q. But having discussed with Mr Lai after February 2018, it
5 didn't occur to you perhaps it is premature to promote
6 him?

7 A. Like I said, the process was started in July 2017, so
8 I was not aware he was being promoted.

9 Q. Yes, but he was not promoted until April 2018. After
10 you realised that serious mistake has been made by him,
11 he has overlooked this obvious mistake on more than 20
12 occasions, and you still saw fit to promote him?

13 A. Like I said, the promotion cycle started in July. I was
14 not part of any of the process. I was not advised that
15 he was going to be promoted. So I did not know anything
16 about his promotion.

17 Q. But you took no steps to stop that promotion?

18 A. Because I didn't know it was happening.

19 Q. Okay. So if one has been promoted, they cannot be
20 downgraded?

21 A. Well, in theory, I guess you could be downgraded, yes.

22 Q. Now, Mr Lai, in cross-examination, also mentioned that
23 at some stage you and Colin have talked to him about the
24 defects. Do you recall that discussion with him?

25 A. There were a number of discussions. I may not recall
26 the exact discussion. But yes, there were a number.

1 Q. Do you recall the conversation that you had with him
2 after you have found out that he was responsible for
3 inspections and he failed to spot obvious defects? Do
4 you recall any discussion with him, talking about the
5 mistake that he has made, or improvement that he should
6 make?

7 A. After the -- of course, at the time, we wanted to try
8 and establish why that happened, and as we've already
9 said, the answers we were getting was he didn't know or
10 didn't understand. Subsequent to the remedial works or
11 during the -- I think it was subsequent to the remedial
12 works, we did put Henry on what we call an improvement
13 scheme, which was focused on his submission of quality
14 documentation.

15 Q. Mr Lai told us that nobody has given training to him as
16 to how to carry out the supervision and inspection work.
17 This is Mr Lai's evidence.

18 A. Okay. I'm not ...

19 Q. After this incident was discovered, has Leighton taken
20 any steps to ensure that its frontline engineers, in
21 particular Henry Lai, would not make similar mistakes in
22 future?

23 A. Absolutely.

24 Q. What steps were taken, please?

25 A. Since this started and obviously with this Inquiry, we
26 have taken many steps to ensure that all the relevant

1 RISC forms or whatever forms required are submitted
2 on time. We monitor them to make sure they are
3 submitted on time, so we have a running schedule of
4 exactly how many forms have been submitted and when they
5 are supposed to be submitted and making sure they are
6 not late. We have a lot more training on the process.
7 There's a whole raft of procedures we are slowly
8 implementing to improve.

9 Q. Mr Kitching, I would like to refer you to paragraph 12
10 of your statement, at page 6489, please, where you said:

11 "Around the same time, we conducted an investigation
12 to ascertain if there were any similar areas/sections of
13 work which could have had similar issues. We concluded
14 there were none as these are the only stitch joint
15 locations on the project."

16 Here, when you mention about "similar areas/sections
17 of work", are you talking about joints or are you
18 referring to other areas in the North Approach Tunnel?

19 A. I'm referring to areas where we could potentially have
20 had a similar situation. The stitch joints, these are
21 the only stitch joints, so we came to the conclusion
22 that because they were the only stitch joints, it's
23 likely that other areas would not have these same
24 problems.

25 Q. So like the other areas, what are the areas you are
26 referring to? We know that there are only three stitch

1 joints. There are no other stitch joints.

2 A. Correct.

3 Q. So when you refer to other areas or sections --

4 A. Well, every time you have a concrete pour and you join
5 one concrete pour to another pour, it's called
6 a construction joint, and in some construction joints
7 you would also have couplers. But that's a very
8 different process, a much easier process than a stitch
9 joint. It's done realtime rather than, as you say,
10 maybe three, four, six months after the main structure
11 has been constructed. So we felt that they were not the
12 same and not likely to have the same defect.

13 Q. So have you carried out investigation into the quality
14 of the work in those areas, or you don't?

15 A. No, we have not.

16 Q. Okay.

17 So in paragraph 12 you are actually talking about
18 the three stitch joints that we have been talking about
19 all the time in this Inquiry? You are not referring to
20 any other areas; right?

21 A. Like I said, this stitch joint work is a unique bit of
22 work and we don't have any other similar works to the
23 stitch joint on that project.

24 Q. So I take it that your answer to my question is "yes"?
25 So you are not talking about any other areas; you are
26 always talking about the three stitch joints?

1 A. Correct.

2 COMMISSIONER HANSFORD: I wonder if the doubt here is
3 regarding the word "investigation". You say:

4 "Around the same time, we conducted
5 an investigation ..."

6 Do you mean a review? It's not a physical
7 investigation, is it?

8 A. No. "Review" is probably a better word. We just wanted
9 to know if there were any similar areas where we had a
10 similar problem. We established these were the only
11 stitch joints. There were other areas where there were
12 couplers but they were construction joints which were
13 a much easier piece of work.

14 COMMISSIONER HANSFORD: The point is you didn't open up any
15 other areas?

16 A. No.

17 COMMISSIONER HANSFORD: You didn't. Thank you.

18 MR CHOW: I will move on to another topic. Other counsel
19 have already investigated with you about the meeting
20 that you had with Mr Ng Chun?

21 A. Yes.

22 Q. Mr Ng Man Chun; right?

23 A. I can't remember.

24 Q. According to your witness statement, at that brief
25 encounter, all that you were interested in is to
26 ascertain the extent of unconnected couplers?

1 A. Correct.

2 Q. I have difficulty in understanding why, at that stage,
3 you were only interested in the extent but not the
4 reason behind the defective work.

5 A. At the time, obviously we were facing a substantial
6 rectification works. I think we just wanted to
7 understand the likely extent of the couplers which were
8 unconnected, which if it turned out to be a minimal
9 amount, perhaps we could have had a lesser rectification
10 procedure. As it turned out, it was a larger amount, so
11 the decision was made to obviously reconstruct the whole
12 joint, or reconstruct the joints.

13 CHAIRMAN: Could I interrupt there just a second. It's
14 puzzled me slightly that this gentleman, the rebar
15 fixing foreman, would actually say to you, "I think it's
16 about 30 per cent."

17 A. Yes.

18 CHAIRMAN: Because normally their job is to make sure that
19 all of them are in properly, and if they are not quite
20 as good, you wouldn't imagine them saying, "Well,
21 I think probably 30 per cent of them are just no good."
22 It almost sounds as if he had an idea, at the time when
23 everything was closed up, that there was a percentage of
24 defects there.

25 A. I get the impression that he knew there were some
26 defects there, yes.

1 CHAIRMAN: Which tends to raise the question that if he knew
2 there were defects there, as opposed to it just being
3 a level of sloppy workmanship that perhaps he turned
4 a blind eye to, had there perhaps been some earlier
5 discussion saying, "Don't bother with this, don't bother
6 with that", and he was able therefore to have an idea of
7 what it was that he had overlooked or had not actually
8 secured?

9 That's a rather difficult question but do you see
10 the point?

11 A. I'm not quite sure I follow.

12 CHAIRMAN: Well, if I was told to do some work that
13 contained a lot of individual little bits and pieces,
14 and somebody came and said to me, when I was meant to
15 have done that work properly, "Right, how much do you
16 think you haven't done properly?", I would probably say,
17 "Hopefully virtually nothing. I know you have
18 discovered a couple that are not joined in, but
19 hopefully you won't find many more." But he actually
20 turns around and says, "I think it's about 30 per cent."
21 That tends to suggest he had an idea, at the time the
22 whole thing was closed up, that there was a specific
23 percentage that hadn't been done properly, and then, by
24 extension, it may be argued that he knew that because he
25 had been told, "Don't do this work."

26 A. It would seem the case, yes. But again, going back, why

1 would an experienced sub-contractor, doing anything --
2 knowingly do something that's wrong, without seeking
3 further approval, higher authority approval? It doesn't
4 make sense to me.

5 CHAIRMAN: But let's just say that sometimes there is
6 a competition between the cost of delay and the possible
7 injury by not doing the work properly. So if you know
8 that there's excess, you may say, "Look, we've got
9 problems fitting these rebars in. It's going to take us
10 three days to get more. Forget it. We don't need these
11 rebars anyway. It's all excess."

12 A. You wouldn't be able to make that decision if you hadn't
13 had any structural analysis done on that joint. You
14 couldn't make -- if you hadn't had that analysis done.

15 CHAIRMAN: So for you, as an ordinary -- as the foreman, not
16 the general in charge of everything, looking down over
17 the field, so to speak, but you are just not in
18 a position to make that sort of assumption?

19 A. No, you are not. If it's there, it should be fixed,
20 unless someone specifically says the design shows you
21 it's not required, these numbers aren't required, but
22 you have to go through a whole process to get that.

23 CHAIRMAN: The same would apply to a very junior engineer?

24 A. Yes, of course.

25 CHAIRMAN: Sorry.

26 MR CHOW: Not a problem.

1 Mr Kitching, that brief encounter with Mr Ng, was it
2 the first occasion that you had a chance to meet someone
3 from Wing & Kwong face to face?

4 A. I think it was. I didn't meet them. I think I met
5 Mr Ng once.

6 Q. I'm asking this question just on the basis of my common
7 sense. Now, this very person caused Leighton a big
8 trouble, so when you had a chance to talk to him
9 face-to-face, I would imagine as a matter of human
10 nature that you would at least ask him, "Look at what
11 you have done to us; why did you produce something like
12 that?"

13 Do you agree with me it would be just natural for
14 you to ask this question?

15 A. You could say that, but at the time, we were confident
16 in our contractual position, so, you know, in the
17 interests of just getting on with the rectification,
18 I didn't see it was crucial that we had to go down some
19 long, protracted conversations or letters going
20 backwards and forwards, tit-for-tat letters. It was
21 just maintaining our contractual position. That's what
22 I was trying to do.

23 Q. The fact that you didn't ask what an ordinary person
24 would have asked, if I may borrow the terminology of
25 Mr Chairman, a cynic may suggest, although I'm not sure
26 I'm not a cynic, you did not ask of course because you

1 knew well it was your own engineer who instructed this
2 defective work to be done. That's why you didn't need
3 to ask the sub-contractor why. What do you say about
4 that?

5 A. I repeat what I said before. Our position, quite
6 clearly, is that a sub-contractor needs to -- has a duty
7 of care to construct the works in accordance with the
8 relevant drawings and specifications and requirements.
9 Clearly that's not been done. Why do we need to go into
10 an argument backwards and forwards when it's clear it's
11 not been done? We just want to fix the job, we have
12 a contractual position. That's it.

13 Q. I will move on. Can I ask you to look at a document at
14 bundle DD2, page 423, please.

15 This is part of the responses made by MTRC to
16 queries or questions raised by the government. Item
17 number 9, where the government asked MTRC to provide the
18 "findings and photo records of site inspection carried
19 out by MTRC in March 2018 to record the conditions of
20 exposed rebars after" -- if we can go on to the next
21 page -- "breaking and removal of three defective stitch
22 joints including the numbers and locations of
23 unconnected/defective couplers observed should be
24 provided. Name and details of sub-contractors involved
25 in the open-up works should be provided."

26 Do you see that?

1 A. Yes.

2 Q. That's the question asked by the government, and if you
3 look at MTR's response, which is this:

4 "Leighton has mobilised mechanical breakers to NSL
5 Tunnels and commenced breaking work on 12 February 2018.
6 During the breaking process for the defective stitch
7 joints, all rebars were torn down together with the
8 broken concrete debris. Site personnel including MTRC
9 inspectors were prohibited by Leighton staff from
10 entering the breaking zone for inspection purposes due
11 to safety requirements. Therefore, the quantity and
12 locations of any unconnected rebars could not be checked
13 and recorded by MTRCL inspectors."

14 Do you see that?

15 A. Yes, I see that.

16 Q. At the time, were you aware that MTRC's inspectors were
17 prohibited from going into the working zone to inspect
18 the unconnected couplers?

19 A. Of course they're not. We can't prohibit MTR doing
20 anything.

21 Q. So are you saying that MTRC is not telling the truth?

22 A. We would not prevent MTR going into somewhere. You
23 know, I haven't seen this before, so -- I mean, all they
24 had to do if there was a problem was come and talk to
25 a senior. But obviously the work was, of its very
26 nature, complicated and a lot of machinery, a lot of big

1 machinery, a lot of cutting tools, but it doesn't mean
2 they can't go and inspect. We could stop the work for
3 ten minutes if they wanted to have a look.

4 Q. Exactly. That's what I was going to ask.

5 A. So if they didn't ask, they can't say, "We were
6 prevented."

7 Q. Because if they -- of course we don't know what actually
8 happened but I would imagine that, first of all, the
9 working area would not be too dangerous, because you are
10 also concerned with the safety of the workers working on
11 that particular part of the work too; right?

12 A. There was a lot going on on the stitch joints. There
13 was a lot of breaking, a lot of big machinery, there was
14 a lot of big, heavy cutting equipment, so we would want
15 to minimise the amount of people in the area, for safety
16 reasons. But it does not prevent MTR going and doing
17 any inspections they want to. We could stop the work
18 for 10 or 15 minutes. They are our client; we have to
19 give them access to whatever they want.

20 Q. All right. Now, today, in the documents, we have to say
21 that there are -- one would expect a lot more photos,
22 but unfortunately we only have very few. Has Leighton
23 taken many photos?

24 A. I don't remember how many photos we have taken. We've
25 certainly taken, I would say, quite a few. I don't know
26 what you mean by "not many". But normally it's the MTR

1 take a lot more photos because their role is inspection,
2 making sure things are done properly. Our role is more
3 doing the work.

4 Q. I would like to move on to the last topic, about the
5 lack of RISC forms. We see from a number of witness
6 statements, your witnesses put down in their respective
7 witness statements giving the reason for their failures
8 to issue RISC forms as per the requirement of the
9 project management requirement; that is to say, to issue
10 RISC form before the hold-point inspection, and they all
11 say they were too busy at the time, they couldn't afford
12 the time to issue the RISC form.

13 Now, I appreciate that that happened before you took
14 on the job, but can I ask you this. Had MTRC insisted
15 that RISC form be issued before hold-point inspection --
16 without RISC form, they refuse to carry out hold-point
17 inspection with you and therefore you could not proceed
18 with the concreting work -- now, would you, as a project
19 director, in such circumstances, put in resources to
20 make sure that RISC forms are issued in good time so as
21 not to cause delay to the project?

22 A. I think the -- from what I can gather, what we
23 understand now is that the whole -- the RISC form
24 process became, I would call it, somewhat informal, and
25 probably an understanding on both sides. So if you are
26 talking about resources, of course, if we had to stick

1 to the letter and the exact requirements of the RISC
2 forms, then we would need to have additional resources
3 to complete the forms, yes.

4 Q. So you would provide additional resources to make sure
5 the RISC forms --

6 A. Well, if it became a bottle-neck and works were not
7 proceeding because RISC forms were not being done
8 properly, then yes, you would have to.

9 MR CHOW: Mr Chairman, I have no more questions.

10 CHAIRMAN: Thank you.

11 MR LIU: No questions from Pypun.

12 CHAIRMAN: Thank you very much indeed.

13 Mr Shieh?

14 MR BOULDING: Sir, just before Mr Shieh goes, I just wonder
15 whether I can ask for clarification from Mr Chow as to
16 whether or not it's positively contended that there was
17 some sort of design fault on the part of MTR. Because
18 questions were put on that basis, "Was it a design
19 fault?" I just wonder if that can be clarified because
20 it may well affect what we do and say over the course of
21 the next few days.

22 MR CHOW: I don't have a positive case on that and we don't
23 take that stance either, so it's just --

24 MR BOULDING: Thank you.

25 CHAIRMAN: So you were exploring whether Leightons itself
26 have explored that possibility?

1 MR CHOW: That is correct. That is correct. So that would
2 be part of the investigation that one would normally do,
3 to look for which party would be responsible for it.

4 CHAIRMAN: Thank you very much.

5 MR CHOW: That may be one of the questions they would ask
6 themselves, to see if they can recover some cost from
7 whoever is in a position to compensate them.

8 CHAIRMAN: Thank you.

9 MR PENNICOTT: Sir, I am bound about to say, when those
10 questions were put, I was having a brief chat with my
11 learned friend Mr Cheuk, sat next to me, and we had
12 rather inferred that the reason the questions were being
13 put was really on the basis that I asked Mr Kitching
14 about, about why there wasn't a thorough, rigorous
15 investigation, and I think that was probably part and
16 parcel of that point.

17 Re-examination by MR SHIEH

18 MR SHIEH: Just a few questions in re-examination,
19 Mr Kitching. First of all, you remember you said
20 earlier, in answer to questions concerning the missing
21 or the fact that the RISC forms were not done -- you
22 said things to the effect that you would expect senior
23 people to appreciate that RISC forms were not done, and
24 you also said that if they were habitually not done you
25 would expect this to elevate to the top. I'm
26 paraphrasing.

1 But do you remember having given answers to this
2 effect?

3 A. I do, yes.

4 Q. I just want to clarify: when you said you expect senior
5 people to appreciate the fact that RISC forms were not
6 done, and you expect the matters to elevate to the top,
7 what did you mean by "the senior people" and what did
8 you mean by "the top"?

9 A. Okay. Perhaps I could explain that a bit better.

10 The RISC forms would -- the quality department would
11 check -- will track the RISC forms, so they will keep
12 a register of all RISC forms, and I would expect the
13 quality department to notify all levels of people, from
14 the people especially filling the forms in, to the
15 section managers that the forms were not being done in
16 an appropriate or timely manner. Then, if the problem
17 maintained, then it should be elevated up to,
18 potentially, the project director, if it was still
19 something that wasn't being done satisfactorily. So the
20 project manager could make a call and try and establish
21 the reasons, and then put in place methods to make sure
22 they were done properly.

23 COMMISSIONER HANSFORD: Sorry, I don't wish to interrupt
24 you.

25 A. I have finished.

26 COMMISSIONER HANSFORD: If I can just clarify that point.

1 Mr Kitching, the quality -- as I understand it, the
2 quality department were monitoring the RISC forms that
3 were actually completed, but were not monitoring the
4 RISC forms that were outstanding. Were you aware of
5 that?

6 A. Not at the time, no. I mean, one of -- obviously, it's
7 important for us to get the completed forms back as
8 quickly as possible. In some cases, they don't come
9 back very quickly. But certainly the quality department
10 should be -- in my opinion, should be monitoring both,
11 both our submission and the response that comes back.

12 COMMISSIONER HANSFORD: Thank you.

13 MR SHIEH: My next topic is in relation to the question of
14 what steps have been -- whether any steps have been
15 taken to pursue Wing & Kwong for the rectification
16 costs. You remember that line of questioning?

17 A. Yes.

18 Q. Can I ask you whether you were aware -- I don't need
19 dollars and cents but on a rough-and-ready basis -- how
20 much is the cost of the rectification work for the
21 stitch joints and the shunt neck joint?

22 A. Yes, I'm aware of how much it cost.

23 Q. Can you tell us?

24 A. It's in the order of \$50 million.

25 Q. Right. In your answer, I think you mentioned -- well,
26 part of the effort that you mentioned was there's

1 an insurance claim?

2 A. Correct.

3 Q. Can you briefly explain the nature of the insurance and
4 the nature of the insurance claim?

5 A. So we've submitted to the insurer a claim for damage,
6 which we are currently pursuing. It's certainly
7 obviously a long way before that gets resolved. That's
8 how we are trying to recover the majority of the cost
9 for the stitch joint.

10 Q. Can you briefly explain to us the nature of that
11 insurance? Is that a kind of liability insurance, or is
12 it insurance against damage suffered by property or --

13 A. I'll have to refresh my memory but I think under our
14 contract it's all risk insurance.

15 Q. All risk insurance?

16 A. Yes.

17 Q. Now, in relation to Wing & Kwong, you talked about
18 matters maybe losing focus because of the Commission of
19 Inquiry, et cetera.

20 A. Yes.

21 Q. Can I just ask you, generally speaking, in
22 a construction contract, are there any methods or usual
23 techniques to cater for the possibility of defects being
24 found in works after they are done?

25 A. Yes, there are clauses in the sub-contract agreement
26 that identify defects should be rectified by the

1 sub-contractor. If they fail to rectify within
2 a certain amount of time, then we reserve our right to
3 do it on their behalf and we will seek to recover the
4 money from them.

5 Q. But what I am trying to get at is whether there is any
6 particular scheme or method to cater for or to
7 facilitate the recovery of such moneys from a defaulting
8 contractor?

9 A. I'm not sure what you mean by scheme. We were just --

10 Q. Any clauses, any method, any --

11 A. There would be clauses in the sub-contract. I don't
12 know off the top of my head which ones they are. But we
13 would just notify them under that particular clause,
14 saying, "We've notified this defect. If you are found
15 to be responsible, we expect you to come and fix it
16 within this amount of time, otherwise we will fix it on
17 your behalf and expect to recover the money."

18 Q. Are you aware of the financial means or backing of Wing
19 & Kwong?

20 A. I'm not but I can't imagine it's that substantial.

21 Q. Usually, in relation to companies which you think may
22 not be substantial, are there any particular steps or
23 methods that you would take to cater for possible
24 recovery?

25 A. We try to withhold payments on sub-contractors which may
26 be defaulting. So we try and have a reserve of money

1 against them, to try and cover the costs. Obviously,
2 this was substantial. So, I mean, I believe that, you
3 know, due to the value of the repairs, we will be very
4 unlikely to recover them from Wing & Kwong. That's why
5 the insurance route. However, we would still have some
6 significant deductibles which we would have money held
7 on Wing & Kwong which we would use to recover those
8 deductibles.

9 Q. When you said you have money withheld on Wing & Kwong,
10 or a reserve of money against them, how much is that
11 reserve or how much --

12 A. It's only -- it's about \$1.5 million, I think. Not
13 much. I can't remember.

14 MR SHIEH: I have no further questions for you. Thank you
15 very much.

16 CHAIRMAN: Thank you very much.

17 Is that completed?

18 MR PENNICOTT: Sir, we have I think completed Mr Kitching's
19 evidence, subject to one observation.

20 Sir, you will recall, during the cross-examination
21 of Mr Henry Lai, by my learned friend Mr Khaw for the
22 government, that we were told that following the
23 investigation of the incident back in February 2018,
24 Mr Lai went through an appraisal, and Mr Khaw asked him
25 a number of questions about that.

26 The Commission has asked Leightons, through their

1 solicitors, for a copy of that appraisal, assuming it to
2 be in writing, of course, together with any other
3 appraisals that may have been done in relation to other
4 staff connected with the stitch joint incident. We
5 asked for any documentation by lunchtime today. We
6 haven't received it, but we have had what I think might
7 be described broadly as a "holding reply" from
8 Leighton's solicitors, which at the moment has drawn
9 a blank in terms of any written documentation, but as
10 I understand it, the message we've had is "so far", and
11 that's why I've said it seems in the nature of a holding
12 reply; so far, that's what the investigations or the
13 research has shown.

14 Now, it is possible, I don't know, that if there is
15 nothing in writing in due course, then I'm afraid it may
16 be necessary -- I'm not saying it will be but it may be
17 necessary -- to recall Mr Kitching, to ask him some
18 questions about the appraisal process, because at the
19 moment we are a little uncertain as to what that process
20 comprises, and I certainly don't want to start asking
21 any questions of Mr Kitching or indeed anybody else
22 until I know the answer to the question whether there is
23 any documentation. If there's documentation, obviously
24 we can then take a view of who we need to ask questions
25 of, but if there's no documentation, obviously we may
26 have to ask different people different questions.

1 Sir, subject to that point ...

2 The only other point -- the next point is that Wing
3 & Kwong or rather Mr Cheung of Wing & Kwong produced
4 that documentation late in his evidence this morning.
5 I've still not had an opportunity of looking at it.
6 I think Mr Kitching probably has, albeit rather
7 briefly --

8 WITNESS: Briefly.

9 MR PENNICOTT: -- with his solicitors. So whether there's
10 anything arising out of that that needs to be put to
11 Mr Kitching as well, I simply don't know at the moment.
12 I have no idea because I haven't looked at the material
13 that was produced.

14 So there are, if you like, two markers with regard
15 to Mr Kitching's evidence.

16 CHAIRMAN: Yes.

17 MR PENNICOTT: But subject to that, those two points, he is
18 finished.

19 CHAIRMAN: All right. Mr Kitching, thank you very much
20 indeed. Your evidence is now complete, subject to those
21 footnotes --

22 WITNESS: Sure.

23 CHAIRMAN: -- that Mr Pennicott has just outlined. You may
24 have to come back and assist us a bit further, but
25 hopefully not, and thank you for all your assistance.

26 WITNESS: My pleasure. Thank you.

1 CHAIRMAN: Thank you.

2 (The witness was released)

3 MR PENNICOTT: Sir, the next witness on the list is I think
4 Mr Johnny Leung, but I see what the time is.

5 CHAIRMAN: Yes. No, it's ...

6 MR PENNICOTT: And I know Mr Leung has been -- I know he is
7 not a current employee of Leighton, but he has been told
8 by the Commission that he may have been required this
9 afternoon and has been asked to be here tomorrow as
10 well. So he will be available, I presume, tomorrow.

11 I mention that because tomorrow morning we have
12 a fixture, as it were, that is Mr Jeff Lii. I assume
13 that's how you pronounce his name.

14 MR SHIEH: Yes.

15 MR PENNICOTT: So it in fact will not be Johnny Leung first
16 thing tomorrow morning, it will be Jeff Lii who we have
17 given this fixed time to at Leighton's request.

18 CHAIRMAN: Good. Okay. Yes, I've got that here.

19 MR PENNICOTT: It's right at the end of the timetable,
20 I think.

21 CHAIRMAN: Yes.

22 MR PENNICOTT: In that connection, if it's of any assistance
23 to anybody and indeed yourselves, we will be, because of
24 the nature of Mr Lii's evidence, focusing very much on
25 the HHS rather than the NAT or the SAT. So we will be
26 switching geographical areas with Mr Lii. It's not

1 terribly satisfactory. We will try to keep everything
2 in some sort of order. But it doesn't matter. We will
3 be going to the HHS area.

4 I mention that because one of the documents we will
5 need to look at in some detail with Mr Lii is the
6 equivalent of the NAT pour summary, which has been
7 referred to as my favourite page. That's the NAT
8 summary at BB9/6363, that's just one page. The HHS
9 summary is eight pages long, and it's much better in A3
10 and we will need to look at it in a little bit of
11 detail. So it may be helpful if you equip yourself with
12 a hard copy of the A3 version, and anybody else as well,
13 rather than looking at it on the screen, because some of
14 the points I will want to make to Mr Lii are much better
15 made by reference to the hard copy where one we can see
16 it in all its glory.

17 COMMISSIONER HANSFORD: What are the numbers?

18 MR PENNICOTT: That's CC9/5642 and following.

19 COMMISSIONER HANSFORD: And the pages thereon.

20 MR PENNICOTT: That's correct.

21 COMMISSIONER HANSFORD: Thank you.

22 Can I just ask, Mr Pennicott, on the programme --
23 so, as I understand it, we've got Mr Jeff Lii and then
24 Johnny Leung. Do we see Karl Speed tomorrow?

25 MR PENNICOTT: No, we then see Regina Wong, because Mr Speed
26 has been given a fixture on Wednesday morning at

1 10 o'clock.

2 CHAIRMAN: Okay. Good.

3 MR PENNICOTT: So we will have Mr Lii, Mr Leung, Ms Wong,

4 I'm not sure who is after Ms Wong -- Mr Holden. Whether

5 we will get to Mr Holden, I'm not sure. We may. Mr Lii

6 I think will take a little bit of time. But Mr Holden

7 no doubt will also be standing by just in case we need

8 him.

9 CHAIRMAN: And as far as general progress is concerned?

10 MR PENNICOTT: I think we are doing all right. As always,

11 the government is able to slow things up a bit on

12 a Monday afternoon. But no, sir, I think we are doing

13 fine.

14 CHAIRMAN: Good. Thank you very much. Then tomorrow

15 morning, 10 am -- Mr Pennicott, 10 am?

16 MR PENNICOTT: Yes, sir.

17 CHAIRMAN: Tomorrow morning, 10 am.

18 (4.56 pm)

19 (The hearing adjourned until 10.00 am the following day)

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