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2016年3月15日

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上午10時03分恢復聆訊

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出席人士：石永泰資深大律師、許偉強大律師及鄭欣琪大律師，為外聘律師，代表食水含鉛超標調查委員會

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王鳴峰資深大律師及陳樂信大律師，由律政司延聘，代表水務署署長

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楊明悌大律師，由趙、司徒、鄭律師事務所延聘，代表何標記建築工程有限公司

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諾頓羅氏富布萊特香港胡文俊律師及康錦煒律師，代表張達欽及金日工程有限公司

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何沛謙資深大律師及殷志明大律師，由羅夏信律師事務所延聘，代表香港房屋委員會

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Mr Ian Pennicott 資深大律師及林定韻大律師，由孖士打律師行延聘，代表中國建築工程（香港）有限公司

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許佐賓大律師，由的近律師行延聘，代表保華建築營造有限公司

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孖士打律師行陳宇文律師，代表瑞安承建有限公司

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顧增海律師行蕭嘉業律師，代表有利建築有限公司、明合有限公司及伍克明

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王先生：主席、委員，我代表水務署作結案陳詞。

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主席，我哋就向委員提咗一個書面嘅陳詞，咁除非主席有另外指示，我就唔打算重複或者大量重複我哋結案嘅陳詞，咁我就假設主席同埋委員會仔細閱讀我哋嘅陳詞，咁我就會就其他各方面提出嘅陳詞作出回應。

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主席、委員，第一個首要嘅問題我想回應嘅就係關於呢個認知不足呢一個課題。呢個認知不足係呢一個聆訊入面係其中一個主調嘅。

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委員，你亦都--主席，你都聽過好多證供、好多人嘅陳詞係關於呢一點。其實水務署個 Task Force 個報告亦都有記錄咗我哋係話建築業界有一個認知不足嘅問題。但係呢個委員會有個 advantage，就係呢個委員會係見過好多證人，亦都睇過好多盤問嘅證供。

咁究竟事實上係咪真係有認知不足呢個問題咁呢？我認為呢個係一個事實嘅裁定。而呢個事實嘅裁定，對於本聆訊其他嘅問題係有一個關鍵性嘅影響。

喺委員會大律師嗰個結案陳詞度有一段係我想帶委員去睇睇，就係喺第 44 段。委員會嘅大律師喺處理呢個認知不足之後，喺第 19 頁 44 段嘅最後一行，委員會嘅大律師係話：

“This casts considerable doubts on HA's position on its lack of awareness of the risk of the presence of lead in drinking water.

45. Once hazards have been identified, it would be important to conduct risk assessment so that priorities could be established for risk management. As stated in WHO's Water Safety in Buildings ...”

咁我就唔再讀嗰段嘞。

同樣，喺中國建築嗰個結案陳詞入面，如果邀請主席同埋委員睇第 37 段，中國建築嘅結案陳詞第 37 段。

主席：Tab 幾呀？

王先生：Tab 幾呀？

講者（不能辨別）：4，4。

王先生：4，okay，4。因為我呢度冇 tab 嘅。

主席：得。

王先生：Tab 4，第 14 頁，37 段，嗰度中國建築亦都 summarise 咗房委嘅總裝備工程師伍達群先生嘅證供，佢就話：

“... (given Ng's evidence that this was 'common sense', 'lead is hazardous to health' and it was 'nothing new'), such knowledge was apparently not transferred to the then senior officers within HA/HD, including the various chiefs comprising the DCMB.”

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主席：等一陣先。

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王先生：好。

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主席：Tab 6，第 37 段，tab 6？

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王先生：Tab 4，我聽講話係，tab 4，第 37 頁。

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主席：China State？

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王先生：China State，14 頁，37，個 final submission。

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主席：哦，唔同嘅，我哋 tab 6。

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王先生：哦，你係 tab 6。哦，唔好意思，因為我個 bundle 係有 tab 嘅。

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主席：得。37 段。

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王先生：37 段，咁亦都講到吳達群先生佢自己認為，即係 common sense 就 lead 係 hazardous to health 嘅，nothing new。

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主席，你都記得 Paul Ho 畀證供嘅時候亦都 share 同樣嘅睇法，就係話究竟鉛對身體有冇害，呢個係咪常識。如果係常識嘅話，咁用建築材料或者用其他物料會接觸到水嘅時候，呢一個認知係咪一個普通嘅常識呢，咁樣樣？因為呢一點其實都幾重要嘅，因為喺事件發生之後，好多嘅建築業界都向水務署或者其他嘅人反映佢哋認知不足。由於認知不足，你可以睇到房委嗰個陳詞就係話「由於我哋認知不足，所以就有賴水務署作為監管機構要通知佢哋、要警覺佢哋、要去防範呢個風險。」

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咁究竟係咪作為業主或者其他嗰個各方，佢哋對呢一樣嘅風險，係咪真係好似佢哋咁講係認知不足？呢個委員會係咪接受佢哋呢個講法，認知不足？呢一個留待委員會去決定。

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但係我哋嘅陳詞就係話經過咗六十幾日嘅證供，包括三個持牌水喉匠嘅證供，就算係嗰三個被懲罰咗嘅持牌水喉匠，佢哋嘅證供都係好清楚。我亦都盤問咗三個持牌水喉匠，佢哋嘅證供就好清楚佢哋知道係唔可以用含鉛嘅物料。咁點解唔用含鉛嘅物料呢？Professor Fawell 都話過，咁呢個似乎都係一個常識，應該問一問點解係唔用得含鉛嘅焊料呢？

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咁係咪出咗事之後，千夫所指就係話「啊，水務署，你有提醒我

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咁，你應該話畀我哋知有呢個風險。由於你唔話畀我哋知有呢個風險，所以我哋就有留心，所以我哋就認知不足。」係咪咁樣呢？個事實嘅真相係咪咁樣呢？我哋對呢度係有啲保留。

我哋嘅第 2 章，喺我哋嘅結案陳詞入面，亦都好廣泛、好詳細咁解釋咗、分析咗呢個 leak of awareness (認知不足)各個層面，咁我呢度時間關係我唔再詳細去複述。但係有一點，如果睇番房委個結案陳詞--我唔知道 tab 幾，但係房委個結案陳詞嘅第 B28 段。第 B28 段，第 22 頁嘅 28 段，房委係咁講嘅，房委話，最後個句，佢話：

“Had HA been made aware of the risk of presence of lead in solder joints and of such presence leading to excess lead in water, it would have put in place suitable control and monitoring measures to prevent the use of non-compliant soldering materials in the plumbing system of public housing estates.”

即係佢哋講法就話如果佢哋知道，有呢個認知，佢哋就會亦都係有呢個能力，亦都係有呢一個咁嘅 capacity 去 put in 個 suitable control and monitoring measures。

所以呢個，歸根結底，如果有一個事實嘅裁定係話房委或者其他嘅持份者、業界嘅人士係有呢個認知嘅話，呢個就正正返番去正話我哋喺結案陳詞嘅時候，Professor 講喺呢個案入面，係咪真係大家唔知道，有 identify 到呢一個咁樣嘅風險呢？似乎就未必係。因為正如我哋喺第 7 段，我哋嘅結案陳詞，水務署嘅結案陳詞。

主席：繼續講。

王先生：係。係正如我哋喺第 7 段嘅結案陳詞就話 Professor Fawell 嘅講法係，喺證供亦都係話：

“... clearly a risk assessment had taken place, because Hong Kong has recognised that lead was a problem, and lead solder and high lead copper alloy fittings are not permitted for use ... and the risk assessment says that it is likely to be a problem ... Where the problem has come has been the operational monitoring [and] that that's actually working. I understand that can be quite complicated, but that's where it's broken down.”

而主席你喺 Professor Fawell 作供嘅時候亦都係提出咗，係唔係好多嘅 BS 係躉咗喺 schedule 2 個度。

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主席：呢度個 risk assessment，係咪講緊 1938 年個 risk assessment？

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王先生：呢度個 risk assessment 係講緊 both 1938 年同埋 1987 年。

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主席：1987 年，邊度有 risk assessment 呢？

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王先生：當嗰個 BS 轉變嘅時候，而行入面亦都係知道係唔可以用焊料嘅時候。

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主席：唔係，唔係行嘅 risk assessment 我講緊，而家講緊水務署嘅 risk assessment。咁你哋水務署 1987 年有做過乜嘢嘅 risk assessment 呢？1938 年唔使講，我明，因為你 ban 咗。

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王先生：主席，關於呢個 risk assessment，我有一點想向委員會提出嚟嘅。

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主席：唔係，呢度你 cite 呢一段其實講嚟講去都係 1938 年咋嘛。

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王先生：係。

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主席：得，繼續。

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王先生：咁就如果我哋睇去第 9 段，我哋嘅結案陳詞嗰度就係講嗰度就話：

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“... the clearly stated requirement that only unleaded solder must be used should have raised question as to why this was sufficiently important to merit a specific mention.”

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跟住嗰個問題就係話咁我哋需唔需要或者監管機構需唔需要再重新、三申五令再重新提醒業界需要做呢樣呢。咁 Professor Fawell 個意見就係，喺下面嗰個 Q&A 嗰度，佢話：

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“That is where the risk assessment and then the highlighting of this -- the reiteration of this risk comes in.”

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呢個就係房委嘅資深大律師問嘅。Professor 話：

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“Not quite. I understand what you are saying, but that's not quite correct, because nothing had changed, basically. Nothing had changed. So the iterative process is something has changed and therefore you go back to the beginning. Nothing had changed. Lead was still a problem, if you put it in.

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...
What the failure was was at the point of the operational monitoring. So one has to say, 'Okay, if we are going to fix this -- we are not actually going all the way to the beginning; we need to make sure that our operational monitoring is both practical and effective'."

主席，我喺呢度想停一停，想講一講關於嗰個風險評估嗰度。風險評估當然有分量化嘅風險評估同埋 qualitative 嘅風險評估。譬如，主席，你喺聆訊嘅時候曾經問過，咁銅又點呢？有冇一個風險評估關於銅喺水入面嘅風險呢？當然，我哋水務署係冇坐低計過一條數就係話，啊，因為咁樣嘅方程式，因為咁樣嘅數據，所以個銅嘅風險指數就係咁樣樣，然後著每一類、每一種嘅 heavy metal 或者每一種嘅 bacteria 做一個咁樣樣嘅風險評估。但係喺我哋嘅總化驗師陳健民畀證供嘅時候，就鉛喺食水存在呢個風險，佢嘅證供係水務署係有做過一個 qualitative 嘅 risk assessment。呢個喺我哋嘅結案陳詞入面，我哋亦都有詳細解呢個 qualitative 嘅 assessment。

主席，呢個 qualitative assessment 包括咗幾個方面。一，當然就係法例已經禁止咗。唔單只係咁樣，而且就係我哋已經 put in 咗一個 system，一個系統，呢個系統係嚟監控呢個物料嘅存在，或者使用呢個物料，正唔正確物料嘅風險。我一陣間會解釋下個制度，LP 同埋 AP 嗰個制度。第三，正如委員會大律師個陳詞有一段亦都講出咗，喺做 water sampling 嘅時候，我哋係有 fixed-point 同埋亦都有 random sampling。呢啲 fixed-point 同 random sampling，當然，係咪咁全面，呢個我哋可以斟酌，因為事件發生之後，風險增高咗之後，嗰個風險嘅評估亦都需要重新考慮過。

但係喺事件發生之前，正如委員會嘅大律師亦都講咗，我哋喺定點，strategic fixed-point，同埋其他地方，只要我哋可以去到嘅地方，我哋都有做 water sampling。Water sampling 亦都有包括鉛嘅。當然，我就承認嗰個 water sampling 係有限制、有局限。局限嘅地方就在於有啲地方我哋入唔到，所以我哋係擺商場、擺管理公司嗰個 water sampling。但係你話喺事件之前，係咪完全冇做過風險評估呢？我哋相信個事實唔係咁。係有一個量化嘅坐喺度嘅研究嘅每一個 bacteria、每一個 heavy metal 嚟做一個咁樣嘅量化嘅評估。

但係對於嗰個--喺事件發生之前，係咪真係有評估過呢個鉛喺水食入面出現過呢？我哋唔同意係有做過，而係只不過呢個係一個 qualitative 嘅做法。

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正如喺我哋結案陳詞入面，跟住嗰段，喺第 10 個度，呢個亦都係委員會大律師非常公道咁指出，即係好容易用一個 20/20 hindsight 嘅，即係：

“... suggesting that there would be additional and quite complicated steps at that time, without having the knowledge of what's happened since, I think would have been showing a level of foresight that might be regarded as quite spectacularly good.”

我一陣間會講一講喺個監管者佢去執行個法例嘅時候，除咗 direct policing 之外，去 put in 一個制度，呢個制度喺呢件鉛水事件發生之前，嗰個 knowledge to 我哋都係行之有效嘅。

喺呢度嘅時候，我想請委員會睇一睇房委會個結案陳詞，H1。H1，房委嘅結案陳詞係咁樣嘅：

“There is no denying that if the HA and the AP had been aware of the risk of misuse of lead solder in joining copper pipes, its quality control and monitoring mechanisms at different stages of public housing construction could have been tightened up so as to prevent the misuse of lead solder. However, it is clear that at the material time the HA and the AP had reasons to believe that the procedures that were in place to prevent the misuse of lead solder were adequate and without the benefit of hindsight, it would have required a spectacular level of foresight for them to have done more.”

我哋唔係話，而我哋亦都承認，水務...

主席：我其實唔同意佢呢一句嘅說法㗎，你所以唔好 quote 佢。

王先生：我知，我知，我知。

主席：我尤其是唔同意佢嗰個字“spectacular”㗎。

王先生：係。主席，我哋亦都未必同意。因為，主席，你記得喺個盤問嘅時候，我頭先 cite 畀你 Professor Fawell 嗰一句，其實房委會嘅大律師有問過 Professor Fawell，可唔可以 extend 嗰個 charity to 房委嘅，佢問咗幾次呢個問題嘅，而 Professor Fawell 都係有 extend 到嗰個 comment 去到房委嘅。

但係，主席，我想講出嘅就係喺事前--事發咗之後，當然我哋知道。

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但係事前，喺事發之前，我哋係完全估唔到，好似李柱銘資深大律師咁講，我哋發夢都估唔到嗰個制度，嗰個 monitoring system，個 operation monitoring system 有 AP 同埋 AP (LP?) put in 咗，而都會發生咗呢一個問題，喺我哋事前係唔知道，而因為我哋評估嘅風險係低。如果我哋評估風險係高嘅話，當然我哋嘅 behaviour 就會好唔同。

所以，主席，我想指出就係話喺認知不足呢點上面，coming back to 我想講，如果各個持份者唔係真正嘅認知不足，而係認知足嘅，咁事發之後再去睇，「啊，咁你水務署係咪可以做多啲嘢，係咪可以行前一步，係咪可以 aware？係咪可以 alert 我哋？我哋係咪需要 going back to the drawing board，重新由 hazard identification、risk assessment、control monitoring and verification 重新再做過一次呢？係咪需要做呢個 reiteration 嘅 process 呢？」當然我同意委員會大律師講話最好將來有咁嘅制度。呢個我哋係願意探討嘅。但係就呢件事，就鉛呢件事，係咪有呢一個四部曲，業界就有認知不足呢？業界就唔知呢件事發生呢？有唔知道風險呢？

如果佢哋知道呢個風險，係咪可以話「啊，水務署，你係食水專家，你要通知我哋嘅。你唔通知我哋，所以我唔知呢個風險。我唔知呢個風險，所以我就喺我嘅物料監控制度嘅情況之下，我就因為好似」--房委咁講，因為佢哋認為 plumbing material 係一個 tiny portion of the project，「由於係 tiny portion of the project，所以我有一千種以上嘅物料要睇，所以既然水務署你有特別提醒我，畀支紅燈畀我，咁所以，對唔住嘞，我就有留意到嘞。」係咪咁呢？

即係我希望個委員會係可以持平。當然有事發生嘅時候，監管機構一般嚟講都會成為眾矢之的。但係喺呢件事上面，水務署嘅同事亦都係非常之盡力係去確保香港嘅食水係乾淨嘅。我都覺得唔係一件值得乜嘢光榮嘅事話我哋話供到去供水點嗰啲水係安全。我哋係供到食水嘅安全最終嘅目的都係希望市民嘅飲用水係安全。我哋唔希望有任何錯覺就係話「呀，我哋認為，作為監管者，我哋嘅責任或者我哋要做嘅嘢係行人止步。」呢個唔係我哋嗰個取態。

但係我希望喺嗰個認知係咪不足嗰度，呢度有一個比較好嘅釐清。呢個係我第一點嘅陳詞。

主席：即係總結你第一點，就係你認為佢哋係認知足嘅，係咪？

王先生：係。

主席：得。

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王先生：第二點，就係我想講一講關於 consumer 或者 agent 同埋業主嗰個責任。如果你睇 B9 to B11，B9 to B11，房委嗰個陳詞。佢哋基本上就話：

“... as a consumer under the WWO ...”

同埋：

“... as one of the stakeholders under the concept of [WSP] ...

...

HA is not under any statutory duty to enforce the plumbing standards prescribed by the WWR.”

呢個我同意嘅，佢哋係有一個責任去 enforce。我一陣間亦都會講 enforcement 嘅 issue。

但係如果你睇番 B23，B23，喺 20 頁嗰度，最後尾嗰個半句：

“... whereas the misuse of lead solder may be caught by section 14 of the WWO which makes it generally an offence for anyone to construct or install an inside service with unauthorised pipes and fittings.”

我想講嘅係話，當然，水務署作為監管者有佢嘅責任，但係作為業主、作為為監管物料使者，佢係咪完全冇責任呢？喺嗰個 WWO 嘅條例底下，佢自己都係有個 statutory duty。呢個 statutory duty 就係要用 prescribed 嘅 pipes and fitting materials，所以佢哋先至會喺佢哋自己嘅 main contract 入面將嗰個 schedule 2 入面嘅要求嘅物料躉入去佢哋嘅 main contract 嗰度。

所以我哋認為嗰個--雖然嗰個業主唔係一個水務專家，但係佢哋亦都係一個 building materials 嘅專家。而且 under section 7 of 嗰個 WWO，佢哋亦都 accept 咗 responsibility for the custody and maintenance of the inside service。呢個係個 undertaking 畀咗水務署，水務署先至供水嘅。

當然，我哋同意房委會或者其他發展商或者其他 owner，佢唔單只係管水嘅，喺呢個聆訊我哋知道，佢哋都同我哋講話，風、火、水、電，各方面佢哋都要睇到。

咁我就向委員會提出，風、火、水、電其實所用到嘅物料，佢哋

都應該係有監控嘅制度；唔單只淨係風、火、電，水都係。所以唔可以話就算--譬如電梯、冷氣，其他地方，如果係同人體或者人嘅安全，居住嘅舒適有關嘅，出咗事嘞，係咪其他風、火、水、電嘅監管機構必定係會有事呢，必定係要負上責任呢？所以我覺得喺呢一度我係提出嚟。

而有個細點我係特別想指出，就係房委喺佢嘅陳詞入面兩次提到有一個 memo。嗰個 memo 就係 B15.4, 40128, 就係講喺 2002 年嘅時候佢哋轉用銅喉嘅時候曾經有個 memo 去水務署就話「啊，我想攞啲意見。」咁佢哋就話「啊，嚟，我問咗你嘞。嚟，你水務署，作為水務專家，你有提醒我嗎；你有幫我做嗰個評估，究竟如果我用銅喉，我喺水方面嘅風險又係點呢，咁樣樣？」

關於呢個問題，我淨係想講喺 2016 年嘅 1 月 26 號，喺石資深大律師 1 月 26 號嗰個中文嘅謄本第 66 至 67 頁--我亦都唔需要再擺出嚟，我只係畀個 reference 畀主席同埋委員。石資深大律師係有問過馮宜萱女士，關於佢哋倚賴呢一張 memo。當時石資深大律師都問過，佢話「呢個 memo, 40128 呢個，其實主力係講 drawing 嗰啲咁嘅嘢，反而就唔係講嗰啲物料嗰啲嘢？」馮女士亦都答「係。但係物料都同 drawings 有關㗎嘛。」咁石資深大律師就話「係。不過就不必關焊料嘅問題？」「答：未必。」「可能關粗幼嘅事，但係即係水務署未必 spot 到會有呢個 point 關於焊料㗎嘛，係咪？」答案「係呀。」所以係咪可以倚賴呢一張 memo 就話「啊，我已經通知咗水務專家嘞，我要用銅喉嘞，咁佢哋有話畀我知，啊，原來用銅喉有呢個風險㗎，所以呢我就大安旨意有用嘞。」

咁我就認為，我嘅第二點就係講，喺作為業主，喺呢方面佢係有一定嘅責任，有一定嘅 statutory duty，而呢個 statutory duty 亦都係佢哋要承擔嘅。

我總結我嘅第二點，如果我想請委員同埋主席睇一睇房委會個陳詞，F1，喺第 35 頁，F1，房委會嘅陳詞，佢話：

“Under the terms of the main contract between the HA and the main contractors, although it was permissible for the main contractors to sublet the plumbing works, the main contractors remain responsible for complying with the main contract. Hence, it was undoubtedly the responsibility of the main contractors to ensure the use of correct plumbing materials (including solder) by the plumbing subcontractors.”

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咁我就問嘞，如果個 main contractor 係有咁嘅 contractual duty，同樣 owner，房委，係咪有一個 duty under the law，佢係咪有一個 statutory duty 呢？

第三個問題，第三點，主席同委員，我想講嘅就係關於 AP，authorized person 嘅角色。

喺呢度我記得嚴汝洲先生，作為總工程師，喺佢嘅證供入面曾經講過，「喂，唔係嗰，我係倚賴 LP 㗎咋嗰。LP 簽咗，我咪簽囉。」亦都有講過話「喂，AP 㗎咋嗰，AP 係唔識水務個嗰，所以呢你唔可以倚賴 AP 嗰，因為 AP 唔識嘢個嗰。你而講緊係啲好專門嘅嘢㗎個嗰。」

主席同埋委員，我喺覆問嘅時候我曾經帶主席同埋委員睇過，其實水務署喺 1995 年嘅時候曾經 review 過呢個 AP system。咁有一封信我都有帶過主席同埋委員睇過，就係 C21 嘅 19095。咁嗰個就係香港 Institute of Architects，喺 1995 年，C21，19095，佢回覆我㗎。咁我想睇一睇嗰封信，跟住再對比一下 E7，房委個 submission，E7 嗰段。

我先睇一睇嗰封信，第二段：

“Under the current practice, the authorised persons, who act as the co-ordinators of buildings works under the Building Ordinance, are the qualified professionals who look after the design and installation of water supply plumbing work and ...”

仲要係：

“... the correct use of pipe material in building projects.”

所以 1995 年嘅時候佢哋，即係 AP，係咪有一個認知，architect 係咪有一個認知，係 under 個 current practice，佢哋有一個責任係去 ensure 個 correct use of pipe materials in building projects。呢個佢哋知。但係如果佢話「喂，嗰陣時話，哦，我唔識㗎，我唔識做呢樣嘢㗎。」咁佢應該話畀我哋知，「喂，我唔識㗎，呢樣嘢唔係我嘅專長㗎。」

但係唔係嗰，當時喺要求做 authorised person 係咪可以做一個 registered person 嘅時候，佢哋：

“... recommend recommend that authorised persons ... should be

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recognised as qualified persons to be registered by the Water Supplies Department for this specific purpose.”

最後一段：

“Members of our Institute that have qualified for the List 1 of the authorised persons would have acquired the basic knowledge of design and installation of plumbing system in their university education and professional training. They would have supervised periodically the carrying out of plumbing installation as part of their inspection duties on building works.”

當然，事發之後，佢哋嘅觀點同睇法亦都好唔同。但係我哋唔好講事發之後。喺事發之前，喺 95 年嘅時候，當我哋要 review 呢個 system 嘅時候，係咪有一個 registered person 嘅時候，呢個係我哋得到嘅答案。所以我哋亦都信任呢個制度，信任 AP 可以做到、perform 到呢個 function，可以做一個 double-check to LP。

好嘞，喺呢個前題之下，我哋再睇番 paragraph E7 of 房委個 submission。Paragraph E7 係咁講嘅，佢話：

“It makes no difference that later on in 1995 the WSD had in a letter to the Hong Kong Institute of Architects mooted the idea of designating an appropriate group of persons to take care of the design and installation of water supply plumbing work and the correct use of pipe material in building projects and that was met with a favourable response. That proposal never came to fruition and until and unless an AP has been duly registered by the WSD as a registered person for the stated purposes, he cannot be taken to have assumed the responsibility of the proposed registered persons.”

主席同埋委員，我就覺得呢段嘅邏輯有啲問題。因為佢就話「即係除非我就 register 咗做一個 registered person 喇；如果唔係，我就有 assume responsibility。」但係當時呢封信講得好清楚，the current practice，其實佢哋就係已經係做緊一個 proposed registered person 嘅工作。所以佢話「喺，除非你註冊咗我，你畀咗名分畀我，喺，我就唔 assume 呢個 responsibility 㗎嘞。」我哋就覺得咁樣講法有少少強詞奪理之虞，未必講得通。

我哋喺 1982 年嘅時候，由於香港個建築嗰個工程越嚟越複雜，咁我哋亦都當時，你話講幾十年前嘞，三十年前嘞，亦都擔心 LP 不能

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勝任。咁嘅情況之下，所以就引入用一個 AP。

C

D

主席：擔心 LP 不能勝任？

D

E

王先生：係。

E

F

主席：唔係咁嘅原因喎，係因為太多嘢要驗之嘛。

F

G

王先生：太多嘢驗，都係一個原因，都係一個原因。

G

H

主席：唔係，我淨係聽到好多嘢要驗咋喎，我有聽過話擔心 LP 不能勝任。
邊一度咁講呀？

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王先生：我一陣間搵個 reference 畀你。

I

J

主席：好吖。

J

K

王先生：我有個 evidence 係個 complexity of 嗰個...

K

L

主席：咁唔係擔心佢不能勝任，佢複雜咗啫，個設計。

L

M

王先生：係，係。

M

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主席：繼續。

N

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王先生：好。所以，或者我咁講，就係話如果你搵咗個 AP on top of the LP 去睇，咁你就有乜可能話「喂，我」--即係好似嚴先生咁講，「喂，LP 咗，我就簽喇喇。我自己呢就有一個 independent system 去 verify 究竟嗰啲嘢係咪 use correct materials。」即係好似我哋嗰個 Assistant Director, New Works, 梁永廉先生咁講，佢話嗰個 chief architect, 個 project manager, 佢話係應該有個 independent system 去做 periodic supervision, 而呢個情況亦都係有。咁你話「啊，雖然我 countersign, 但係我呢就係 rely on LP 簽，我就簽。」咁呢個喺呢個聆訊...

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主席：呢個唔使講喇，梗係唔得喇。

P

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王先生係：係，好。咁主席，我就唔 labour on 呢個 point 嘞。

Q

R

主席：呢個唔使講喇，梗係唔得喇。

R

S

王先生係：係，好。咁主席，我就唔 labour on 呢個 point 嘞。

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主席，或者我畀一個 reference 畀你先。頭先嗰點，就關於嗰個 LP 嗰度，就喺林正文嘅第一份口供，第 15 段。

T

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主席：佢講乜嘢，你講多次畀我聽。

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王先生：“With the growing sophistication and enlargement of the scale of inside services across Hong Kong, the WA recognised that relying on LPs to ensure quality of inside service may not be adequate.”

就係咁樣。

主席：Complex 咗啫，複雜咗啫，唔係話佢唔 competent 去做。

王先生：佢話就 may not be adequate 。

主席：繼續。

王先生：係。主席，另外一個 point 我想講就係關於嗰個 WWO 046 同埋 WWO 132 嗰兩張 form 。

房委會嘅大律師喺佢嘅結案陳詞用咗好多篇幅去解釋點解簽 part I of WWO 046 嘅時候，佢哋係冇承擔到責任。亦都講咗，佢哋喺簽 WWO 132 嘅時候，其實就係講緊去水嘅，就同食水安全係冇關嘅。

主席，我哋喺我哋嘅結案陳詞亦都有好詳細嘅篇幅去討論呢個問題，咁我亦都唔再重複嘞。我只係想講話，如果講個 WWO 132，係淨係講去水嘅，就同食水無關、飲用水無關嘅話，呢個係好難喺證據上係講得通，而佢哋亦都--呢個可能係一個好 clever 嘅之後，事件發生之後，律師嘅 argument，但係當時佢哋簽 WWO 132 嘅時候就唔係淨係講去水嘅。

主席，跟住我想講嘅下一點，亦都係一個好重要嘅一點，就係關於嗰個 enforcement 嘅問題。我亦都留意到，主席，你同埋委員喺呢個聆訊嘅時候有一個關注點。呢個關注點我哋係知道嘅，就係話係咪水務署定咗個標準，無論係通過 BS 又好，係其他又好。

主席，你曾經問過，「喂，咁你要執法先得㗎。你有執法。」我亦都記得，主席，你曾經舉過兩個例子，一個就係泊車，雙黃線，有冇抄牌；一個就係藥房，「你要去巡下藥房，睇下啲人有冇賣假藥或者違規嘅。」就係水務署，係咪因為水務署佢冇執法，或者佢點樣執法，而係咪因為咁樣，所以引致到呢件事呢？

主席，呢度有兩個點我希望向委員會提出嚟，畀委員會參考，喺 deliberate 呢個 issue 嘅時候。第一樣嘢，就係作為一個監管者 (regulator)，佢哋執行嘅時候佢有好多種途徑可以去 regulate。當然有一種途徑就係 direct policing，但係亦都有一種方法就係 put in 一個

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system。

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就舉藥房呢個例子，如果我哋講緊嘅唔係一間街度嘅藥房。

D

E

主席：唔係一間乜嘢話？

E

F

王先生：唔係一間街邊嘅藥房，喺個瑪麗醫院。如果個醫院入面已經有個制度...

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G

主席：瑪麗醫院唔受毒藥及藥劑條例管制。

G

H

王先生：我知。我舉個例啫，我例個例子。即係話如果佢已經有一個制度，譬如去買藥嘅時候有個監管嘅制度，有一個 procurement department，佢喺呢個用藥嘅時候可能醫生要處方，再真係用嘅時候，護士要再 double-check。喺咁嘅制度情況之下，個監管機構...

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主席：佢都冇人監管，我都話。衛生署唔會巡查瑪麗醫院，有人監管佢嘍，係呀。

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王先生：係。

K

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主席：啱呀。

L

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王先生：嘎。譬如泊車，我即係舉--即係我啲例子未必好啱喇，因為...

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主席：直情唔啱添喇。

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王先生：嘎。譬如我而家舉泊車嘅例子。如果你街邊，當然係。但係譬如假設如果你入咗屋苑，有個私人屋苑，佢入面有保安、有管理員、有管理公司，佢有一個制度就話「啊，你入咗屋苑範圍入面，你啲車就唔可以亂泊，佢有一個制度喺度。」咁呢個情況之下，嗰個差人係咪會 on top of that 再入去屋苑入面去睇下啲車係咪亂泊？

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Q

主席：呢個都唔啱，呢個完全係風馬牛不相及嘅比喻。

Q

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S

王先生：係。或者，主席，我想--兩個比喻都唔啱。或者，主席，我想帶出一點，或者可能我未必帶得好出嚟，就係話喺嗰個執行(enforcement)嘅時候，我哋嘅基礎就係話已經有一套嘅制度。有一個制度就係話喺用物料嘅時候已經有由 LP 去睇咗係咪用適合嘅物料。LP 會簽 WWO 046，話畀水務署知道佢係用咗適當嘅物料。呢個第一重嘅保障。

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喺做咗呢啲之後，喺個 site 嗰度會有一個 site foreman，佢會做

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continuous supervision, 然後再有 periodic supervision, 然後再由 project manager, 個 AP, 再簽, 話畀呢個水務署知道呢一個就已經係符合咗。

喺呢一個基礎之上, 我哋要考慮--我哋唔係絕對封閉, 我哋唔係話我哋完全唔考慮, 而家同咗委員會講我哋完全將來都唔諗住有任何改善。

但係我想向主席同埋委員提出, 就話喺呢個制席嘅基礎上面, 如果我哋要考慮再做 interim 嘅 inspection 或者 sporadic surprise 嘅 inspection, 是否合乎經濟利益或者是否可行。呢個係一個需要考慮嘅地方。點解呢? 因為我第二點, 就係喺我哋做嗰個 Benchmarking Study, 即係就呢個問題, 我哋亦都內部有探討過。我亦都做咗個 Benchmarking Study, 睇下世界各地嘅水務監管機構點樣處理呢個問題。咁我哋做嗰個 Benchmarking Study which Professor Fawell 亦都睇過, 佢都大致同意嘅, 就係世界各地--係, 我講, 主席, 我哋係完全開放嘅。如果委員會有任何意見提出, 我哋要 supply check 嘅, 我哋會考慮點樣做。呢個係我哋完全開放, 我哋唔係拒絕。

但係我想向主席同委員會提出, 就係話而家似乎嗰個水務嘅監管機構, 一般, 我哋睇過嘅世界各地, 包括英國、星加坡、加拿大、美國, 佢哋喺嗰個 enforcement (監管)嘅時候都係淨係 rely on LP 嘅 self-certification。香港就已經係進步咗啲嘞, 因為我哋仲有個 AP 嗰層。

主席: 英國唔係喎。英國嗰啲 drinking water inspection 就何以去個 consumer 個 tap 嗰度係驗水個喎。

王先生: 驗水一件事, 驗水一件事。

主席: 驗完水之後, 跟住佢就會話畀人哋聽, 「喂, 你個」--如果有問題嘅話, 佢就會話畀人聽, 「你有問題喎」, 咁樣樣個喎。

王先生: 係, 係。

主席: 所以你唔可以話英國冇喎。

王先生: 係。主席, 我一陣間會講驗水嗰個問題, 即係攞水辦, 即係亦都有講過話我哋應該係最後把關攞水辦嗰度。我而家講緊唔係攞水辦。我而家講緊係話去到嗰個 construction site, 做 interim inspection, 或者係去 spot check...

B

B

C

主席：Okay。

C

D

王先生：...嗰個 building materials 嗰度。咁就我嘅理解，即係可能我錯喇，但係我嘅理解，即係我睇過 Benchmarking Study 個 report，似乎如果就 interim inspection，喺個 site 度就有咁做嘅。

D

E

E

主席：咁我哋香港先進啲，行多人嘅一步，更好，有咩嘢問題呢？

F

F

王先生：冇問題。

G

G

主席：係喇。

H

H

王先生：冇問題。我完全唔係話冇問題。

I

I

主席：咪係囉。

J

J

王先生：我只不過係想向主席提出，第一，喺事件發生之前--我而家話唔係講話我哋--我頭先已經強調咗兩次，我哋唔係話將來唔考慮呢樣嘢...

K

K

L

L

主席：但係我哋唔知道第二啲地方咁嘛，因為你頭先--因為我哋其實都睇過啲 regulations 㗎嘛，咁水務署有好多 power 㗎嘛，即係 in respect of 啲 piping 嘅 materials，諸如此類。咁你知道喇，係咪--成日都有人講㗎喇，greater powers come with greater responsibilities 咁嘛。

M

M

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王先生：呢個我哋知道。

O

O

主席：係囉。

P

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王先生：係，我知，我知道。主席，我唔係唔同意呢樣嘢。

Q

Q

主席：係囉，咁你有 power 就有 responsibilities 㗎喇，咁 responsibilities 咪即係 duties 囉。

R

R

王先生：Yes。

S

S

主席：係喇。

T

T

王先生：主席，或者我想喺呢度講嘅就係話其實係有兩點。一個就係...

U

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主席：因為我唔知道人哋有冇咁嘛。我唔知道英國有冇咁嘛。我唔知英國有冇啲條例話「啊，原來呢你個」-- regulators 係可以要人哋、強制人

V

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咁擺啲嘢去驗㗎嘛。

C

D

王先生：係。

D

E

主席：係咪？所以我唔敢講。所以...

E

F

王先生：主席，呢個都係你--呢個我或者我哋可以做一啲 **research**，再提供一啲資料關於嗰個 **overseas**...

F

G

主席：唔好提供資料嘞，我哋已經...

G

H

黎先生：人哋有冇做，事實上有冇關係嘅。人哋唔做，我就唔做喇，係咪咁嘅意思？你...

H

I

王先生：唔係，我唔係咁嘅意思。

I

J

黎先生：咪就係囉。

J

K

王先生：黎委員，我唔係咁嘅意思。

K

L

黎先生：係咪？

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M

王先生：所以...

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N

黎先生：咁你出嚟講就話乜嘢呢，**enforcement**，你哋執法嗰度，你哋睇過嘞，其他人哋地方都有做，「點解我哋要做呢？」

N

O

王先生：唔係，唔係，我唔係咁嘅意思。黎委員，你唔好誤解我嘅意思。我唔係話，我已經講咗兩次，我哋唔係話封咗條路。我哋唔係話因為外國唔做，所以我哋冇做，我哋將來唔會做。呢個唔係...

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黎先生：你個 **rationale** 係咩嘍，你話「係因為我哋而家做嘅嘢呢」，你都做足晒嘞，「人哋有做，我又有做㗎嘞。人哋冇做，我就冇做囉。所以將來點，我可以將來做嘅」，咁咩嘍，係咪？

P

R

王先生：係，...

R

S

黎先生：係咪？

S

T

王先生：係，黎委員，我想講我哋係，第一，就係話喺事件發生之前，喺我哋唔 **aware** 到嗰個 **system** 入面有呢個風險，即係話會有呢個 **operational monitoring** 呢一度嘅 **breakdown**，好似 **Professor Fawell** 咁

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講，之前，我哋的確係跟世界各地關於 interim inspection (巡查)個方法。所以有兩點，就係，第一，喺發生事件之前，我向委員解釋，即係話我哋係採用一個咁樣嘅 approach。呢個 approach 當然喺個條例入面，我哋有咁嘅 power。但係我哋用呢個 approach，我嘅 submission 就係話都係 within reason。

好嘞，喺呢件事發生之後，展望將來，係咪我哋可以有 interim inspection，個 interim inspection 嗰個 extent 係幾多呢？我哋喺我哋嘅結案陳詞亦都有花咗好長時間去解釋呢個問題。所以我想向委員指出，即係話喺個執法上面，我哋喺將來係會考慮嘅，唔係一個唔考慮嘅問題。但係我想將呢個執法嘅問題結合個 context。個 context 就係香港係有一個 LP 同 AP 嘅制席。佢喺個地盤入面係有一個監管嘅制度。即係即係喺 enforcement，關於物料監控方面，我哋係有呢個背景。

咁 Professor Fawell 亦都講咗，其實呢一個 monitoring 同埋 regulation system 係冇問題嘅。個問題就係呢個 system 係咪 effectively fully implemented 嘅啫。喺 HKIE 同埋 HKIA...

主席：唔係，我知，咁樣樣咪就係水務署 come into place 囉，點樣樣 effectively 可以 enforce 呢一樣嘢囉。

王先生：係。主席，...

主席：我--係囉。

王先生：係。主席，我想--其實我已經講咗三次，我哋亦都唔係話撇除呢個可能性，但係...

主席：唔係，你...

王先生：...但係我想強，再一次強調，就係--亦都係我最後一次強調，就係 HKIA 同 HKIE 同埋個 task force，佢哋三個嘅 report，一致嘅結論都係喺個 material control on site 方面，最 effective 嘅方法，就係資源喺調用上最有效嘅方法，就係搵一個 designated 嘅 professional。

主席：我有異議。呢個樣我有異議。

王先生：即係以一個 registered person 或者係一個 designated 嘅 professional 去統籌、去做呢個物料監控。

主席：啱呀，我同意。

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王先生：嘎。好嘞，做咗呢個。個問題就係，主席，如果你或者呢個委員認為喺做咗呢個之後，Water Authority，個水務署，仲需要間中去做巡查或者係做呢個 inspection 嘅，咁呢個會係一個課題，我哋可以探討。我只不過係指出，即係話喺一個咁樣嘅--因為，第一，...

主席：唔係需要探討呀，因為而家現存嘅法例你已經有一個咁樣嘅 power 去做。咁有咁嘅 power，即係有咁嘅 responsibilities 喇，係咪先？

王先生：係。主席，我只不過係想向你提出有一個 prospective。個 prospective 就係話個 effectiveness，即係其他國家點解唔咁做呢，佢可能係真係有佢嘅理由嘅。即係佢未必係有咁嘅 power，而係有一個理由點解個監管機構冇咁做。

主席：佢有好多理由，我哋唔知喇，不過總之我哋就係香港。

王先生：係，我知。主席，我只係想向你提供一個 prospective。個 prospective 就係話如果你要做到一個 effective 嘅 interim 嘅 inspection 嘅話，咁其實你一定要有個 surprise element 先得。如果你有個 surprise element 嘅話，即係我哋嘅理解，如果有 surprise element 嘅話，如果你通知佢，我下個禮拜或者我聽日嚟，咁個監管，即係個 interim inspection，嗰個作用有幾大呢？

尤其是香港嘅地盤，嗰個情況同外國唔同嘅。香港嘅地盤面積好大。你唔係話地盤，即係外國，一個好細嘅屋，你行入去即刻可以睇到佢做緊乜嘢。我嘅 understanding 係由地盤嘅門口行到去較度，再行到上去樓嗰度，都可能要十幾、廿分鐘。

主席：你睇下佢講緊乜嘢地盤囉，係咪？

王先生：係。。

主席：啱唔啱？

王先生：係。

主席：你唔係個個地盤都係 housing developments，有幾躉樓嘍嘛。咁你譬如好似呢啲咁樣樣。譬如我問你嘞。你話，啊--如果我講譬如丁屋，咁你點呢？冇 AP 個啲，咁點呀？冇 AP 嘍。

王先生：係。

主席：係咪？

B

B

C

王先生：係。

C

D

主席：淨係得個水喉匠嚟㗎咋嘛，咁點呢？

D

E

王先生：係。

E

F

主席：因為你而家聚焦咗嘅 public housing 之嘛。我哋 term 2 唔係淨係聚焦 public housing 個嘢，成個個嘢。

F

G

王先生：係。

G

H

主席：冇呀，冇 AP 個嘢，冇啲係。

H

I

王先生：主席，呢個我同意你嘅睇法嘅。

I

J

主席：係喇，咁點呀？咁你淨係靠個 LP 囉。

J

K

王先生：係。

K

L

主席：啱唔啱？

L

M

王先生：呢個係靠 LP 嘅。

M

N

主席：咁邊個 supervise LP 呀，邊個監管 LP 呢？

N

O

王先生：監管 LP 就係水務署。

O

P

主席：Exactly。

P

Q

王先生：係，呢個我同意嘅。

Q

R

主席：咪係囉。

R

S

王先生：係，呢個我同意嘅。我唔係唔同意。或者我總結呢點...

S

T

主席：你去到 term 2 嘅時候，你淨係針對 HA，話係，HA 係其中一個我哋要睇嘅，不過 HA 而家--譬如好簡單，HA 而家寫晒啲 specifications 出嚟。

T

U

王先生：係。

U

V

主席：Okay？你睇到。

V

B

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C

王先生：係。

C

D

主席：好嘞，私人發展商，你睇點呀？冇 specification 畀你睇個啫。

D

E

王先生：係。

E

F

主席：咁你點做呀？全部 rely on 佢囉啫，係咪？

F

G

王先生：係。

G

H

主席：啱唔啱？而家因為 HA 擺晒啲嘢出嚟畀你睇啫。你知道佢有個 specification library。你知道佢要用啲乜嘢嘢。你知道佢呢啲咁嘅嘢。好嘞，聽日你行去新界一個丁屋又好，行去一個單棟樓，係私人發展商，你乜都唔知嘅，咁你靠乜嘢嘢巡查先？係咪淨係靠 WWO 46 同埋到最後人哋簽啲兩張 form 先？冇嘢㗎嘛。即係咁講呀。

H

I

王先生：主席，即係...

I

J

主席：係咪？

J

K

王先生：...我亦都好坦白講嘅，對於呢一方面，關於丁屋同埋其他啲屋，我唔係--我唔知...

K

L

M

主席：唔係，你唔好理佢丁唔丁屋。即係我嘅意思，即係好簡單一間屋，譬如好簡單，我而家聽日話我要起一間屋嘞咁樣樣，我要大裝修咁樣樣，係咪咩？我又唔係好似 HA 咁樣，有晒 specifications 嘅。我要由頭到尾整過晒我啲銅喉、啲水喉，咁我梗係唔會搵個 AP 嚟做㗎。我搵個水喉匠嚟做嘅啫，啱唔啱先？咁點呀，咁你哋點巡查呀？咁你乜都唔使做囉啫？

M

N

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你而家就成日話 AP、AP、AP，咁我同意，我唔係唔同意，AP 有佢嘅責任。

P

Q

王先生：唔，。

Q

R

主席：係呀，不過--咁點呀？

R

S

王先生：係，主席，我知道 where you are coming from。我明嘅。我只係想講兩點，跟住我就會 move on 去另外一個 point。

S

T

主席：你明唔明白？你個 LP，呢個冇人監管個囉啫，...

T

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王先生：唔係，唔係，我明。唔係，主席，你....

C

D

主席：...如果你唔監管就。

D

E

王先生：主席，你要明白，我係明白你講嘅。

E

F

主席：係呀，得喇，繼續。

F

G

黎先生：我哋都明你 where you come from。

G

H

王先生：係。係，主席、委員，我只係想講兩點。第一點就係關於嗰個私人樓同埋嗰個村屋嗰度，我真係要 take instruction，我真係唔清楚，所以我唔敢...

H

I

主席：唔係，我知呀。係咪...

I

J

王先生：...--所以我唔夠膽同你有一個 debate on 呢個 issue。

J

K

主席：唔係，唔係，我 common sense approach 㗎咋嘛。

K

L

王先生：係。

L

M

主席：你而家話「啊，我 put in place LP、AP。LP 又有 AP 睇住。呢個又有嗰個睇住，冇問題。」咁但係呢個係啱，我同意，喺公屋係咁樣樣。不過有啲工程唔係去咁複雜㗎嘛。

M

N

王先生：係。

N

O

主席：咁純粹係靠 LP 㗎之嘛。咁邊個監管 LP 呀？

O

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王先生：我都已經答咗，主席，...

P

Q

主席：唔，係囉。

Q

R

王先生：...係監管 LP 係水務署嘅責任，責無旁貸，呢個我同意。

R

S

主席：係囉。

S

T

王先生：我下一個 point 你講 LP 嘞。

T

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主席：係囉，繼續。

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王先生：咁主席，before 我繼續或者我講下一個 point，只係有一點我想

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make 一個 marker 喺度，就係關於嗰個水務條例個 power，個 power 點樣用法，係用幾多，喺咩嘢情況之下運用，當然呢個係有一個 discretion 畀咗個 administration。咁呢個 exercise of 呢個 discretion，因應，好似我頭先咁講，即係就呢條十一條屋邨嚟講，佢有一個 system 喺度，佢有個 background 喺度，咁喺做 interim inspection 嘅時候--當然可能我哋將來--我一陣間再講 LP 嘅時候，我哋可能係要一次過睇嘅，即係話喺嗰個 enforcement 嘅時候係咪一刀切呢，抑或係因應唔同情況，只係有唔同嘅 enforcement 嘅考慮呢？咁我呢個一陣間再講。

但係我就係想 impress upon 個 Chairman 同埋個委員，就係話，冇錯，係有個 power，power comes responsibility，但係喺 exercise 個 power 嘅時候其實就賦予咗嗰個 executive 或者個 administration 有一個 discretion。咁呢個 exercise of 呢個 discretion 其實係一個 a matter of policy。

主席，跟住我就想講係關於 LP 嗰個問題。關於 LP 嗰度，我想有一點我好想向主席同埋委員提出嘅，就係話當然我哋喺呢個聆訊就見到三個 LP。咁嗰三個 LP，我哋或者都覺得呢三個 LP 或者--因為我哋懲罰咗佢哋嘞。我哋亦都知道佢哋明知故犯，明知道係唔可以用含鉛焊料嘅，佢哋都有盡到做 LP 嘅責任。

我哋成日都講唔好一竹篙打一船人，係咪就係咁樣樣，所以我哋對 LP --因為响呢個聆訊都有個印象就係話，啊，LP 係咪個社會地位唔夠高，即係受到社會上嘅--水喉匠咁，係咪話唔夠尊重？

我想向委員同埋主席提出，其實嗰個 LP --當然有三個係比較佢哋--而家我哋發現佢哋有問題，但係係咪一竹篙打一船人？佢哋因為社會嘅地位唔好或者冇咁高，而我哋就認為「啊，LP 呢，一般都唔得嘍嘞。」

主席：我從來冇咁嘅說法㗎。

王先生：係。

主席：但係如果你認為我哋有咁嘅說法呢，咁你就錯。你亦都唔需要同我哋講呢一樣嘢。

王先生：係。

主席：如果你認為因為佢，啊，中三或者中五，所以就唔係一個專業人士，從來冇咁嘅說法。

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王先生：係，非常之好，主席。主席，呢個我好感激。

主席，我想講就係話關於喺監管，水務署責無旁貸係監管 LP 嘅。但係監管者，監管一個專業團體，我哋有好多嘅經驗。或者你監管一個專業人士，咁你個監管嘅方式、監管嘅方法係乜嘢呢咁樣？咁我哋而家係用發牌、扣分個制度。當然我哋我係冇去--就除咗 final inspection 嘅時候，我哋係冇中間去 inspect 究竟呢個 LP 做成點，佢個 supervision 做得好唔好咁樣樣。

呢一個制度，而家現時呢個 LP 嘅制度，第一，我係同意委員會大律師嘅講法，係有改善空間。但係係咪需要一個 overhaul 呢？未必。點解呢？因為，第一，我想向主席同埋委員提出...

主席：我哋冇諗過要 overhaul LP，直情取消晒呢一個 class 嘅人，係咪？

王先生：係，係：

主席：我哋冇咁嘅諗法。

王先生：係。主席，我想講喺任何嘅專業團體都有啲係 grandfather 牌。有啲佢可能係好早之前擺咗個牌，醫生又好，甚至乎大狀都好，佢可能係好耐之前擺咗個牌。擺咗個牌之後，亦都可能有一個機制係每年要考一次試佢先可以續牌，或者每兩年或者每五年要考一次試先至可以續牌。實際上有啲專業人士，無論係工程師又好，醫生又好，大律師又好，佢可能擺完個牌之後，佢可能有執業，佢可能有執業。呢個問題係普遍性存在，即係唔係淨係指持牌水喉匠單獨嘅問題。

主席：唔係，你想講咩嘢先，呢一個 LP 呢度？你返番去你嘅課題，你想話畀我哋聽乜嘢？

王先生：我想向主席提出就係話關於 LP 呢個監管嘅制度，即係我哋水務署喺 discharge 佢嘅 duty 去監管 LP 嘅時候，喺呢個食水含鉛事件發生之前，我哋認為個監管其實係足夠嘅。咁呢個食水含鉛事件發生之後，我哋認為係可以加強監強，亦都會加強監管。即係呢個就係我想講個主旨。

咁點解我覺得，我嘅陳詞就係話，喺呢個水食含鉛事件，喺呢個風險發生之前，我哋認為監管 LP 係足夠呢？當然有兩--即係各方面有兩個批評。一個批評就係話「喂，唔係嗎，佢哋呢有啲係 grandfather 牌嘅，咁你有冇即係要求佢哋每一年更新佢哋嘅牌照呀咁樣樣？」咁我哋就話，即係點解我哋喺之前，鉛水事件發生之前，都有要求佢哋

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更新呢個牌照呢咁樣樣，或者佢哋要再考試咁樣樣。即係新入行嘅啲，即係 VTC 嘅啲，就已經有一個四年嘅課程，即係都幾 rigorous 嘅，咁就有個針對點就話「喂，之前你嘅 grandfather 牌個個你有冇考慮過呢啲咁樣樣呢？」咁我就係想提出話其實呢個就係同一般嘅 profession 都一致嘅。

第二個關注點就係話「喂，你有冇關注佢哋嘅 continuous 嘅 professional development, CPD courses, 咁樣樣？」咁呢個我哋喺結案陳詞亦都講咗話我哋而家會要求佢哋咁做嘅。即係我哋會提出，即係要求佢哋上 CPD 課程。呢個係可以有改進嘅空間。

我哋亦都同意 LP 係 perform 一個 key role。即係譬如頭先你講話村屋，或者話其他小型嘅工程，個 LP 個水準，同埋佢要知道要做嘅乜嘢都係好緊要嘅。呢個我係同意嘅。

咁但係，即係我哋認為，就喺今次食水含鉛事件入面，就嗰三個 LP 嚟講，即係事實上佢哋又真係知個啱。

主席：知道乜嘢呀？

王先生：知係唔可以用含鉛焊料。佢哋知道係唔可以用含鉛焊料。所以 Paul Ho 就話「啊，我 2004 年嘅時候係有通知到呢個 VTC，叫佢哋教嘅時候，remind 佢哋要教埋。但係點解我有通知到 existing 嘅 LP 呢」，因為佢覺得呢樣嘢應該大家知嘅，而事實上亦都證明佢哋真係知，但係亦都唔係有任何人講話 LP 唔知道用焊料要用無鉛嘅焊料。

主席，我知我時間有限，我而家想去做一個講三個--另外一個大題目。嗰個大題目就係關於嗰個驗水嘅度。

嗰個驗水嘅度，主席，我想分開三點嚟講。第一點，就係我睇到呢度我哋好關注，就睇到李資深大律師嗰度佢有個 conspiracy theory，有一個 political conspiracy theory，有個政治嘅陰謀論。

主席：係吖。

王先生：主席，我要係喺呢度就向你指出，我哋係強烈反對呢一個陰謀論，亦都向主席同埋委員指出係完全冇陰謀嘅。

如果我哋睇即係番委員會即係嗰個李大律師嗰個結案陳詞，如果我哋去番佢嘅 14 段。佢嘅 14 段，咁佢就話個理由，點解佢話有呢個 conspiracy theory，佢第一點開宗明義講，喺第 14 段，就係話因為嗰

個 WHO 個“PGV for lead is not based on a calculation of the average quality of water routinely consumed. Prior to 2011, the WHO Guideline Value for lead was calculated on the basis of the provisional tolerable weekly intake of an infant, but the PTWI was withdrawn in 2011 since the WHO/FAO Joint Committee of Food Additives and Contaminants found that it was not possible to establish a PTWI that would be considered protective of health.”

主席，呢個有一點我知道你可能會--即係我都要冒個風險，我想同主席你提出嚟，就係話喺呢個審訊開始嘅時候，委員會嘅大律師其實呢個喺中國建築嗰個結案陳詞都有講到，我哋其實喺開案陳詞嘅時候，委員會大律師開案時嘅第一段亦都講咗個目標，即係呢一個研訊。佢第一段係咁講，佢就話嗰個“excess lead is defined as lead content exceeding 10 micrograms which is the guideline value recommended in WHO's 'Guidelines for Drinking Water Quality' representing the concentration of lead in drinking water that normally does not result in any significant risk to health over a lifetime of consumption.”

即係去到聆訊開始嗰日，我哋，包括我個律師團隊，我自己個人，嗰個--所以我而家講緊個 conspiracy 個陰謀論，都係 under 個 perception，個 perception 係啱抑或錯，一陣間再講。但係我哋都係 under understanding，就係話嗰個超標者有一個標，係 10 個 microgram，當然我哋而家知道，after Professor Fawell 畀咗證供，喺 2 月 5 號，年廿七嘅時候，佢入個 report 嘅時候，我哋知道佢話「其實嗰個 PGV withdraw 咗之後，就 no longer health-based。」佢亦都提出話，咁嘅時候你唔應該 focus on 10，香港應該有低啲嘅 value，我呢個一陣間會講。但係喺嗰個聆訊開始嘅時候，就算係委員會嘅大律師，亦都係講緊嗰個--有兩點重點，第一就係講緊個 exceed 點個 level 係 10。

第二...

主席：咁我哋個大律師唔係水務專家嚟㗎嘛。

王先生：係。

主席：咁你水務署 7 月、8 月都已經有水務專家 advise 你哋，係咪？

王先生：係--唔係，主席，我想講話，我而家 adjust 個點，我唔係話--

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我而家唔係有任何 criticism，我而家只係針對個 conspiracy theory。即係話我...

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主席：咁你唔使講我哋大律師講啲啲嘢，咁你講喇。

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王先生：嘎。另外就係話喺當時，呢點亦都緊要嘅，因為喺當時有一個講法，就係話嗰個 PGV value 係 represent 緊嗰個，係一個“would not result in a significant risk to health over a lifetime of consumption”。咁我亦都係 under 呢個 perception，就係呢樣嘢。咁當然主席你知道，喺聆訊之中，主席你亦都 criticize 過我話呢個唔係事實。

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主席：你同我哋嘅大律師有一個好大概分別。

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王先生：係。

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主席：你代表水務署。

J

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王先生：係。

K

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主席：你有你嘅 client 嘅 instructions。

L

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王先生：係。

M

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主席：你知道晒你啲 client 擺嘅 instructions，你嘅 client 有水務專家畀佢嘅意見，畀你哋嘅意見，所以你同我哋係完全唔同。

N

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王先生：係。主席，我 as I said，我而家唔係 criticize 任何人，我只不過係話我哋當時，就算我自己，我...（聽不清）

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主席：你第一份嘅專家報告，雖然冇--其實入左嚟我哋，不過冇叫個專家出嚟。

P

Q

王先生：係。

Q

R

主席：啱唔啱？你遞何建忠教授嗰份報告。

R

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王先生：係。

S

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主席：Preliminary report。

T

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王先生：係。

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主席：手寫嗰份，都係講緊頭先你話我哋律師所講嘅嘢。

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王先生：係，係。所以我哋話我哋--即係我哋當時嗰個 understanding，其實同--我只係想講一點，我哋當時 understanding 同委員會大律師嘅 understanding 係一致，一致嘅。

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而且，主席，我都想 adjust 個 conspiracy 嗰度，就係話其實去到 Professor Bellinger 個 report 嘅時候，Professor Bellinger 去到 report 嘅時候，Professor Bellinger--我喺 V1/63，不過我唔需要擺，我就係讀畀你聽得嘞。佢話 "In my opinion, the acceptance criteria specified by the Water Supplies Department for four metals, lead 就係 10 micrograms per litre are all based on sound reasoning..."

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主席：對唔住，我覺得你呢度係完全 out of context 咁樣樣去 interpret 人哋嘅 evidence 嘅。

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王先生：係。

K

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主席：唔。

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王先生：或者主席，我想講，我唔係--我而家嗰個 focus 係集中喺 conspiracy 嗰度。

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主席：係吖，咁你不如講--不如你聚焦講 conspiracy，點解你認為冇，係咪？

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王先生：係，係。

P

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主席：嘎，你唔好講埋晒呢個 guideline value 先，如果 guideline value 係你另外一個議題嘅話。

Q

R

王先生：係。主席，我係想講，其實呢兩個有少少 overlap 㗎，我就想講...

R

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主席：唔。

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王先生：主席，我就想講，其實由於我哋一路個 understanding，直至 Professor Fawell 出個 report 為之前，水務署嘅 understanding，in fact 陳健民畀嘅證供，都係講緊 10 個呢個 microgram 係 health-based。你記得陳...

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主席：係咩，繼續。

王先生：陳健民畀證供嘅時候，亦都係講緊，我哋係攞緊一個呢 average 而唔會飲到有 significant risk to health over a lifetime of consumption。如果係咁，我哋係基於--水務署係基於佢既定嘅程序，佢有個 sampling manual，佢個 sampling manual 係講如果要 assess 個 water quality 嘅時候，佢就攞 flush sample。我哋一陣間講下個 flush sample 啱唔啱，但係我而家講緊話，佢係因為個 chief scientist 畀咗呢個 recommendation，根據佢呢一個既定程序。

而且主席你亦都記得，喺陳漢輝博士畀證供嘅時候，喺 8 月 27 號嘅時候亦都有一個專家會議，個專家會議亦都係有討論過--有幾個專家討論過，究竟應該係用 first draw 抑或係用 flush。咁專家回應 8 月 27 號嘅結論，亦都係同意水務署個既定程序，係用 flush sample。

主席：咁唔等於一定啱啱。

王先生：唔係，唔係，啱與錯係另一回事。

主席：係呀。

王先生：啱與錯係另一回事。我一陣間會 discuss 啱錯嗰個問題，但係我係想講話，嗰個水務做呢個決定嘅時候，完全係一個 professional judgment。你可以話--我一陣間會 adjust，呢個 professional judgment 可能啱，可能錯，all right, but 完全唔係明知道錯，都用呢一個方式，唔係一個 conspiracy。即係嗰個 factual，你要講到佢提高到政治陰謀嘅層面，就話「呢一個就唔係呢個 chief chemist 嘅意見，即係一個人決定，亦都唔係個專家、委員會嘅決定，而係話去到一個 interdepartmental 嗰度，然後有一個--somehow 我哋有--明知道呢一個都唔啱啱嚟嘞，都要決定係用呢個，因為會慳啲 resources。」主席，我必須要非常之強調咁講嘅，呢樣嘢我哋係絕對絕對反對，唔係咁。

主席：唔同意，唔係反對。

王先生：哦，唔同意，唔同意，唔同意，唔同意，係，唔同意。主席，我知道我仲有十七分鐘，咁我再好快講埋我跟住嗰兩點。

第二點就係關於究竟嗰個攞水辦應該用咩方式。主席，我必須

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要講，又要冒啲險嘞，因為其實我係同意呢個 China State 嗰度，中國建築講 paragraph 5，就係話其實呢度係有少少搬龍門。因為我哋嗰個一路攞水辦，當時社會上嘅關注點，就係話食水含鉛超標。

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主席：其實你成日話冒險，但係你係 senior counsel 嚟㗎嘛，你唔需要一定聽你個 client 嘅 instructions 㗎嘛。

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王先生：唔係，唔係，唔係，唔係，唔係。

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主席：你要 exercise 你個 professional judgment 㗎嘛。

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H

王先生：唔係，主席，我...

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主席：係咪？唔係你個 client 話乜，你就要同我哋講乜㗎嘛。

I

J

王先生：唔係，唔係，唔係，主席，我而家講嗰啲嘢都係我 exercise 咗我自己 independent professional judgment，...

J

K

主席：Okay，唔。

K

L

王先生：...冇任何 conspiracy 嘅，我自己，out of 我自己 exercise 嗰個 judgment。

L

M

主席：唔係，我講驗水，唔。

M

N

王先生：係，我知，驗水我知道。主席，我想講就係話，第一，我哋一定要有一個背景，即係唔可以話用而家個情況代番落當時睇。因為當時個社會，因為我哋香港係有一個--而家為止，立法上，係有一個立法講明香港食水喺 tap 個水質係乜嘢，我哋有一個水務署自己嘅 patch，個 patch 去到 connection point，就係用個世衛個 10。當呢件事出現嘅時候，社會上嘅輿論，一般個政治個就係話「喂，你超標。你超標咩嘢呢？就係超世衛個標，就係超 10。」而房委會作為一個 client 同我哋講--一個 customer 同我哋講嘅時候，個 instruction，in fact 喺嗰啲 press release 都有講，就係叫我哋去驗下究竟我哋係咪符合世衛個標準。當然如果而家調番轉頭話「啊，當時唔係咁，係你要去測一測 maximum 個 lead 係幾多。」咁個做法會唔同，我同意，但係當時社會個關注點，嗰陣時個龍門 set 喺度，就係話有食水超標，超 10。

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主席：社會嘅關注點唔係世衛標準係乜嘢，社會嘅關注點係啲食水安唔安全，就係咁簡單。

U

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C

王先生：係。主席，當時嘅...

C

D

主席：係你話畀佢哋聽啲食水安唔安全。王先生：係，主席，呢個我有爭議。

D

E

主席：係囉。

E

F

王先生：呢個冇爭議，但係我...

F

G

主席：你話畀一般市民聽，究竟係 1，係 5，係 10，佢哋唔係咁關心嗰個 figures，佢哋最關心就係「啲水安唔安全，我可唔可以飲」。

G

H

王先生：係。

H

I

主席：你講 figure，其實某程度上係冇意思嘅，因為最重要佢哋關心嘅就係「我可唔可以畀我啲細路飲」。

I

J

王先生：係。

J

K

主席：到今時今日都係。

K

L

王先生：係，主席，呢個問題我即刻會處理。

L

M

主席：唔。

M

N

王先生：主席，我即係想同你講話，當時嗰個一路去到 Professor Fawell 畀個 report 嘅時候，之前，2月5號之前，我哋水務署嗰個水務專家陳健民，同埋其他專家嗰個關注點，亦都係房委會畀我哋嘅指示，instruction，就係去度下個水係咪超過世衛個標準。咁個世衛所謂超標，咁如果我哋話 okay，我哋而家有標，all right?

N

O

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P

主席：房署唔係水務專家嚟個嘞，佢最多都係畀一個好 general 嘅 direction 你，你唔可以話佢「啊，房署叫我哋驗係咪符合世衛標準咩，咁我哋咪驗係咪符合世衛標準囉。」

P

Q

Q

R

王先生：係。

R

S

主席：你唔可以咁講個嘞，啱唔啱先？

S

T

王先生：啱。

T

U

主席：咁佢淨係話「喂，我淨係--我好想知道我啲住客--我哋住客住啲啲

U

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地方嗰啲水係咪安全嘅，你同我驗一驗喇」咁，梗係咁啱喇。

C

D

王先生：係。主席...

D

E

主席：你而家只不過係...

E

F

王先生：係。

F

G

主席：...各位大律師將佢咬文嚼字到放大嚟睇啫。

H

王先生：主席...

H

主席：即係我 common sense approach 啲咋，老老實實。

I

王先生：係，主席，我 common sense 嘅 approach 就係咁，我 common sense 嘅 approach，就係如果我哋戴番當時喺 2 月 5 號之前嗰頂帽，食水咩嘢為之安全嗰條線點樣定呢，...

I

J

主席：係呀。

J

K

王先生：...我哋嗰陣時嗰個--under 嗰個 impression，2 月 5 號之前，都係 benchmark 世衛 10 嗰個。

K

L

主席：唔係，benchmark 世衛完全冇問題，不過個問題就係跟住你點樣樣做有問題咋嘛。Benchmark 世衛 10 microgram，絕對冇問題。

L

M

王先生：係。

M

O

主席：不過跟住正如其實都係長氣，譟氣，講嚟講去就係個 purpose 咁嘛。

O

P

王先生：係，我知道，而家我會 come to 個 purpose 嘅，主席。

P

Q

主席：咪係囉。

Q

R

王先生：主席，我就想--第一點就想向主席同埋委員提出，就係因為當時嗰個水務署嘅專家，水專家，佢哋就係 benchmark 咗 10，咁 benchmark 咗 10 之後，佢就用嗰個 flushing 嗰個 sampling protocol，...

R

S

主席：係呀。

S

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王先生：……就係佢哋就係搵出嗰個水質，就唔係 for the purpose 去搵個 maximum。因為我哋而家知道有兩個 purpose，一個...

C

D

主席：我明。搵乜嘢水質重要吖，你覺得？

D

E

王先生：係呀。

E

F

主席：你覺得搵乜嘢水質重要？呢個就係個問題咋嘛。

F

G

王先生：係。

G

H

主席：搵邊一啲水質重要吖？

H

I

王先生：搵就係嗰個 general consumption 嗰個--因為頭先嗰個我...

I

J

主席：唔係，個問題咁，如果採用你哋個 protocol...

J

K

王先生：係。

K

L

主席：不過我哋都係重複又重複嘅啫，咁使乜去搵啲住客，使乜入去佢屋企啫？

L

M

王先生：主席，呢...

M

N

主席：行上去天棚，行落去地下個 sump tank，行上去天棚個 roof tank 咪得囉。

N

O

王先生：嘎。主席，呢一點我都想直接同你澄清嘅。

O

P

主席：係。

P

Q

王先生：嘎。因為可能主席你有一個誤會，就係話其實個 flush 2 to 5 minutes，2 就係有人住，5 就有人住，...

Q

R

主席：唔係，我提...

R

S

王先生：...就係要攞到 connection point 嗰啲水，...

S

T

主席：喂...

T

U

王先生：...其實唔係嘅。

U

V

主席：唔係咩？

V

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王先生：唔係嘅，因為...

C

D

主席：你睇番你哋自己個 sampling protocol 啲？

D

E

王先生：唔係，唔係，唔係，主席，佢...

E

F

主席：你再講多次。

F

G

王先生：其實你擺兩分鐘或者擺五分鐘，你係擺唔到喺 connection point 個水質。

G

H

主席：唔係，你睇番你自--我明，我絕對明白，因為點解呢？每一棟大廈都唔同。有啲大廈可能--有啲單位你可能兩分鐘就得，有啲可能五分鐘都得，但係你睇番你個 sampling protocol。

H

I

王先生：係。

I

J

主席：你自己嗰個 sampling protocol。

J

K

王先生：係。

K

L

主席：喺你哋個 sampling manual，二至五分鐘 or 甚至 longer。

L

M

王先生：係。

M

N

主席：甚至 longer。個目的係乜嘢嘢呢，係 free 嗰個 surface pipe with stagnant water。

N

O

王先生：係。

O

P

主席：係寫到明㗎。

P

Q

王先生：係。

Q

R

主席：啱唔啱呀？

R

S

王先生：係。

S

T

主席：跟住 ISO5667 又好，唔記得咗嘞，講到明嘅，係話要去到 constant temperature。

T

U

王先生：係。

U

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主席：點解要去到 constant temperature？因為 Professor Fawell 講咗，constant temperature 就即係街嗰啲水喉嘅水，因為係只有嗰啲水喉嘅水先至會係 constant temperature。因為你入咗間房裏面，有可能曬，有可能遮陰諸如此類，係咪？所以其實兩個，無論你個 sampling protocol 又好，ISO5667 又好，都係講緊驗個 water mains 嗰啲水。

王先生：係。主席，呢一點我必須要澄清，你記得我問李行偉教授嘅時候，如果你香港嗰十一個 affected estate，如果你擺街嘅水嘅，你唔係講緊 minutes 嘅，你係講緊 hours 嘅。因為你又要擺嗰個天面缸，又要擺嗰個 down pipe。

主席：你唔好講 Professor Lee 嗰個，Professor Lee 嗰個佢有佢特定嘅 objective 要去做咩嘛，係咪？

王先生：係。

主席：Professor Lee 佢唔係 determine 究竟嗰啲水係--嗰個屋邨係 affected 抑或唔 affected 咩，諸如此類啫，係咪？

王先生：係。或者主席，或者我簡單咁講。

主席：唔。

王先生：Depending on 個 flow rate，depending on the flow rate，兩至三分--兩分鐘呢，因為兩分鐘就有人 occupy 嘅，五分鐘就有人 occupy 嘅。兩分鐘呢，因為我哋擺水嘅時候，根本都唔知道究竟個問題發生喺邊度。即係佢可能係喺個 horizontal 嘅 pipe，可能係 down pipe，可能係天面缸，我哋唔知㗎。因為唔係話已經知道嗰個問題，然後特登去擺一個嘅水係冇問題嘅，因為如果咁，係唔使做，係咪？即係我哋擺兩至三分鐘，即係呢一個概念一定要澄清，我哋擺兩至三分鐘個水，depending on the flow rate，其實都係擺緊嗰個內部供水系統入面嘅水。即係如果我哋係話我哋要想擺個水，係 as supply 喺個 connection point 嘅，好簡單，就係 connection point 擺水得嘞，咁唔使 flush，仲簡單。

主席：咁你而家你成個 sampling protocol 就係咁 design 咋嘛，啱唔啱？

王先生：主席，我想講...

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主席：即係我睇番--唔係我作，我睇你哋個 sampling protocol，sampling procedure 咁嘛。

王先生：係，係。

主席：係咪？

王先生：主席，我想講就係話，我哋喺決定做--水務署喺決定做...

主席：我明白你講咩嘢嘢嘞，conspiracy theory 講完喇，基本上，係咪？

王先生：係，係，係。

主席：得，唔。

王先生：主席，第二個，就係關於即係接收咗 Professor Fawell 嘅意見之後，即係話香港 moving forward 係咪應該有一個低啲嘅 level，all right？呢一點，即係 in fact 最重要嘅點就係話，香港係咪應該有 action level。因為我哋而家--即係如果話--okay，因為我哋而家嘅信息係話，okay，compliance 係冇得用嘞，因為都唔係 health-based，all right。所以你如果用 compliance 呢一個 concept 去做，all right，似乎就唔係好行得通。好嘞，looking forward，香港係咪需要有一個 action level，而個 action 應該用咩嘢 protocol，究竟係用 first draw 一個 litre，究竟係用好似李大律師講，應該用 first two draws，抑或係應該係用 Professor Lee 嗰個 protocol。

主席：呢啲我哋唔會 design 嘅。

王先生：係。

主席：我唔會同你 design 呢啲嘢，你放心。

王先生：我知，我知。我只係想向主席同委員會講出，即係話如果 looking forward，我哋而家講緊嘅係話，市民最緊要嘅唔係個 figure，而係我食水安唔安全，我食水安唔安全，我哋而家認為嗰個 compliance 嗰個 10 已經唔係一個 figure 香港應該 adopt 嘅。Looking forward 應該係用咩嘢嘅 action level？應該用咩嘢 interaction level？正如陳漢輝教授講，呢一個就其實以--唔係一個 committee 可以一個人落...

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主席：我唔會--你放心，我唔會決定，不過我亦都話畀你哋聽，根據我睇番 Professor Fawell 嘅 evidence，佢話 5 microgram 係 easily achievable。

王先生：係。

主席：Easily achievable。

王先生：係。主席同埋委員。

主席：唔。

王先生：喺我哋結案陳詞度，我哋都係會，直情會，唔係考慮，係會 form 一個 international expert 嘅 committee 去研究呢個問題，包括香港應該 adopt，係咪立例？因為其實，主席，如果我哋立例，強制性喺水龍頭出嘅水係應該係某一個 action level 嘅，咁呢個呢就唔單止係有一個公共資源嘅問題，亦都係有一個 social costs，即係話居民，即係業主都可能會 incur 有啲 costs。咁呢一個係需要即係持份者討論，我哋願意主導呢個討論，但係呢個呢我哋係會做嘅。

但係嗰個重點，就係第一，因為你哋其實而家好多爭議，如果你用嗰個 flush sample，all right，咁佢又唔滿意。你用 first draw，而家李行偉教授出到嚟，原來 first draw 就唔係--未必可以攞到最高嗰個 concentration，咁結果你要攞 first two draws。咁究竟--如果你睇，澳洲、加拿大，就係澳洲，New Zealand，佢哋好似係用 flush sample。Japan 就用 flush 咗五個鐘頭--五個 minute，然後 stagnation 嗰三十分鐘。

主席：你再講多次，唔該。

王先生：係。即係而家如果做嗰個 flush sample，似乎各處鄉村各處例。

主席：都唔係嘢，唔係各處鄉村各處例嘢--唔係，係各處鄉村各處例，不過睇番，好似冇乜邊一個國家係話用 flush 嘅 sample。如果有國家用 flush 嘅 sample，不過 at the same time 一定有 unflushed 嘅 sample。

王先生：唔。，主席，我哋--而我睇番陳健民嘅第四份證人口供。

主席：係。

B

B

C

王先生：咁佢就有 survey 晒各個國家嗰個...

C

D

主席：唔係，HKIE 又有做過。

D

E

王先生：係，係，係。

E

F

主席：係咪？好多人都做過喇。

F

G

王先生：係。我哋 understand，譬如加拿大，Cuba 咁，佢就淨係 flush sample 嘅啫，all right。咁譬如 New Zealand，佢都係 compliance level，都係用 flush sample。所以主席，我哋就認為，即係譬如...

G

H

主席：咁人哋做得唔好，我哋就要做得唔好嘞咩？

H

I

王先生：唔係，唔係，唔係，主席，我...

I

J

主席：咁咪係囉。

J

K

王先生：呢個 concept 唔係--我呢度都唔係咁講，我意思係話，因為呢個--即係我哋譬如有話--有啲係 bottom line case 係 5 至 9 個啲。

K

L

主席：係。

L

M

王先生：咁其實我哋需要嘅--而家即係譬如喺個--我哋而家需要嘅，即係而家我哋會做嘅。

M

O

主席：係。

O

P

王先生：就係訂立一個喺水龍頭出水嗰個 action level 係幾多，跟住嗰個 sampling protocol 係幾多。譬如如果講 action level，美國就係 15，and then 就係有十...

P

Q

黎先生：即係簡單講，其實係你叫我哋個 commission 唔好 make 一個唔 fix 嘅 recommendation，指定咗，畀啲空位你走，...

Q

S

王先生：係，係，係。

S

T

黎先生：...咁解啫，係咪？

T

U

王先生：係，冇錯，冇錯。

U

V

V

B

B

C

黎先生：咪得囉。

C

D

主席：我哋唔會，你放心。

D

E

黎先生：簡單講句，就係咁啫，係咪？

E

F

王先生：係，係。

F

G

主席：係咁多喇嘛，係咪？

G

H

王先生：唔係，唔係，主席，我仲有兩分鐘，我仲有一個題目要...

H

I

主席：仲有兩分鐘，嘅，繼續吖。

I

J

王先生：嘅，我仲有一個重要嘅題目要講。

J

K

主席：唔。

K

L

王先生：主席，就係關於喺嗰個聆訊入面，同埋嗰個人嘅證供入面，都有關於一啲 discarded samples。即係有講嗰啲抽水辦嘅時候，啲 discarded samples。

L

M

主席：係。

M

N

王先生：嘅。呢個 discarded samples，我有三個 point 我想講，第一，就係呢個 discarded sample，關於有啲屋邨入面，其實個律師有問過署長，水務署署長。

N

O

主席：係。

O

P

王先生：咁佢亦都講咗水泉澳邨。陳健民畀證供嘅時候，我睇過啲 transcript，再翻睇，unfortunate 就有人去問過陳健民話，「喂，咁其他嗰啲 discarded sample 又點樣樣」，all right。咁其實琴日就房委就 helpfully 入咗一個佢哋嘅 press release。咁嗰個 press release，主席，嗰個 press release 就係 C21 嘅 19128。

P

Q

主席：尋日先至入嚟㗎？

Q

R

王先生：係，就係房委嘅，有一個 press release，19128。

R

S

主席：點解喺尋日仲入呢啲咁樣嘅 evidence 入嚟嘅？邊個人㗎？

S

T

T

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U

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C

王先生：房委。

C

D

主席：但係房委而家擰晒頭喎，否認喎。

D

E

王先生：吓？冇人到？

E

F

何先生：唔係我哋入嚟，呢份。唔知係咪委...

F

G

殷先生：類似係我哋。

G

H

何先生：其實我哋都問過，係...

H

I

石先生：我哋擺入去。

I

J

何先生：...房委會。

J

K

殷先生：委員會。

K

L

王先生：哦，sorry，唔好意思，委員會律師...

L

M

何先生：委員會，實情。

M

N

主席：我哋入嘅，得，唔。

N

O

王先生：嘎。

O

P

石先生：有個 press release 係之前入。

P

Q

王先生：之前入嘅。嘎，之前出咗，嘎。

Q

R

石先生：Press release 其實係一早，應該係專家個報告出咗街之後，
應該係有好多媒體就對李行偉教授...

R

S

主席：係，係，係。

S

T

石先生：...裏面嘅一啲內容就好關注。

T

U

主席：有嘢問喇，係。

U

V

石先生：咁喺嗰陣時，就房委應該係出咗呢個 press release，跟住我
哋就尋日就將呢個 press release 擺咗落 bundle。

V

主席：得。

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何先生：呢個--主席，呢個 press release 係 2 月 5 號。

王先生：係，2 月 5 號。

主席：好，唔，得。

何先生：即係去到，最底你會見到個日子。

主席：唔，繼續吖。

王先生：主席，如果我睇嗰個 press release 嘅第--即係最後尾嗰段。

主席：係。

王先生：All right. "Regarding the number of samples or samples that have not yet been made public, when HD and WSD conducted systematic water sampling tests for PRH estates in the past, individual water sampling results were not adopted for various reasons. For example, HD and WSD had found cases where water samples 'with excess lead' were suspected of contamination during the sampling process, which led to deviation in the test results. Under these circumstances, more water samples had to be taken before the water quality of the estates concerned could be determined. If, after analysis, it was concluded that the water samples 'with excess lead' had been affected by environmental factors, the samples would be discarded."

所以關於嗰啲 discarded sample，其實係有返去再做嗰個--即係唔係就咁 discard，而係有返去再做過，然後先至--樓尾有個決定，然後先至決定 discard 嗰啲 samples 嘅。

主席：唔係，而家人哋就係話你唔應該 discard 咗佢囉，你咪擺番佢喺度囉。

王先生：係。

主席：係咪？你有 explanation 解釋嘅，咁你咪講囉。

王先生：係，主席，最後一--即係 on 呢點，最後一個。

B

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主席：係。

C

D

王先生：就係話你...

D

E

主席：呢個都係返到去個 conspiracy theory，係咪咁嘅意思？嘎，唔。

E

F

王先生：其實呢個李行偉教授亦都就呢啲，佢話 different interpretation，跟住佢自己再做一個 verification。咁佢做個 verification 之後，關於呢啲，認為係即係有呢啲 sample，因為嗰七條邨佢都返去再做過，all right。咁做完之後，嗰個 building concentration 都係唔超標。所以其實即係呢一點就即係冇任何 conspiracy involve 喺度。

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主席，我仲有--其實我知道過咗時兩分鐘，但係我仲有一點，我想--仲有兩--好細點，兩分鐘你可唔可以畀我...

I

J

主席：係。

J

K

王先生：...再講講？

K

L

主席：講吓。

L

M

王先生：嘎。主席，喺瑞安嗰個陳詞嗰度，就有講關於其他啲 copper alloy 嗰個 contribution 嘅。

M

N

主席：係。

N

O

王先生：咁如果我哋睇瑞安嗰個陳詞...

O

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主席：我睇咗，得。

P

Q

王先生：嘎，就係第 10 段同埋 11 段。

Q

R

主席：係。

R

S

王先生：佢就話，其實個 copper alloy 同埋個 solder joint pipes，個 contribution copper alloy 仲多過 solder pipe joint。

S

T

主席：係。

T

U

王先生：但係嗰度有個 misunderstanding，個 misunderstanding 就係佢 compare 一個 copper alloy 同埋一個 solder joint，

U

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其實呢個 joint 位係好多。

C

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主席：係。

D

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王先生：所以佢呢一個 comparison 係唔正確㗎，all right。所以嗰個 main cause still 係 come from 個 solder joint，就唔係嗰個 copper alloy，即係佢呢個分析有少少唔係好正確。

E

F

主席：我明，因為嗰個 elbow...（聽不清）嗰啲係多好多㗎嘛，係咪？

F

G

王先生：係，係。

G

H

主席：即係嗰個係純粹係一比一咁樣。

H

I

王先生：一比一，所以你用嗰個一比一嗰個咁樣嚟講係冇乜意思嘅。

I

J

主席：唔。

J

K

王先生：最後，主席，我亦都講關於嗰個 definition of affected estate 同埋 unaffected estate。

K

L

主席：嘎。

L

M

王先生：即係呢一個點樣 classify 一個 estate 係 affected 抑或 unaffected 呢？從水務署嘅角度嚟講，我要澄清，呢個亦都係重點就係，我哋係幫佢做咗 water sampling 之後，至於點樣 classify 邊個 building 係 affected，邊個 building 唔係 affected 呢，...

M

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N

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主席：係佢哋嘅事吖，喎。

P

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王先生：冇錯，主席，呢個就係我嘅陳詞。

Q

R

主席，before 我坐低之前，我都希望講講就係，因為時間有限，我唔能夠即係逐點逐點有啲好細點，譬如 for example，即係究竟 WSP 係咪--即係嗰個係咪我哋頒布呀？其實唔係頒布，就係我哋內部文件，即係有啲細點，咁我有時間 go through，但係我希望主席你睇我哋嗰個結案陳詞，我哋盡量 try to be comprehensive。即係我有 orally 講嗰啲 point，就唔係話我--即係我哋冇--即係冇時間...

R

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U

主席：你會寫晒㗎喇嘛？

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王先生：寫晒，寫晒。

C

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主席：係，你寫晒，得喇。

D

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王先生：嘎。同埋主席，即係我--我最後咁講，因為如果喺接下嚟嘅 oral submission 有其他新嘅指控關於水務署，咁我當然冇辦法，因為我時間冇辦法再回應嗰啲新嘅指控，咁我就只可以 rely on 我哋個 closing submission。

E

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主席：只係 rely on 你個 closing submission?

G

H

王先生：嘎。

H

I

主席：即係寫咗入嚟嗰啲?

I

J

王先生：係喇，係喇。

J

K

主席：咁梗係喇，唔係講極都講唔完㗎喇，係，啱。

K

L

王先生：係。

L

M

主席：不過你坐低之前我有嘢想問你。

M

N

王先生：係。

N

O

主席：Section 15。

O

P

王先生：係。Section 15，係。

P

Q

主席：第 148 頁--第 148 段。

Q

R

王先生：148 段?

R

S

主席：係。

S

T

王先生：係。

T

U

主席：我就唔係講緊究竟點樣樣 interpret 呢一個 law 呢一樣嘢嘅問題。

U

V

王先生：係。

V

主席：不過我覺得我哋今次係一個 COI hearing，係一個 judicial hearing。

B

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王先生：係。

C

D

主席：呢啲咁樣嘅 submission，完全係唔應該擺入去嘅。唔應該擺入去嘅，就係話畀我聽“would be a clear error of law. Any decision based on such an interpretation would itself be unlawful and liable to be set aside.”

D

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王先生：對唔住。

F

G

主席：而家即係話畀--你而家即係話畀法官聽「你唔好作呢個決定嘞，你作呢個決定呢，我會上訴你㗎。」

G

H

王先生：主席，我...

H

I

主席：你夠唔夠膽咁樣寫畀 Court of Appeal?

I

J

王先生：唔。

J

K

主席：話你咁樣款，“clear error of law”。

K

L

王先生：係，主席呢個我只可以同你道歉，我同意你嘅睇法。

L

主席：啱唔啱？

M

M

王先生：嘎。

N

N

黎先生：我唔係法官，我都覺得你寫呢啲咁嘅字眼都幾重㗎。

O

王先生：係。

O

P

黎先生：係咪？

P

Q

王先生：係，我接受。

Q

R

黎先生：係咪？

R

S

王先生：係，我接受。

S

T

主席：我哋而家休息二十分鐘。

T

U

上午 11 時 38 分聆訊押後

U

V

V

上午 11 時 57 分恢復聆訊

出席人士如前。

楊先生：主席，係。

主席：係，Mr Yeung。

楊先生：就何標記喺 2 月 4 號同埋 3 月 10 號嚟講，就已經提交咗佢書面陳詞。咁我希望嚟講，就係詳盡列舉咗何標記希望委員會會注意嗰啲事項，咁我唔打算係再重複裏面所講嘅內容。

咁我只係代表何標記係強調番幾點，就係第一點嚟講就係話，何標記其實就一路嚟講，就係對鉛嗰個，尤其是焊錫料有鉛呢個問題嚟講，個認知係非常之不足。咁亦都係佢唔知道嚟講，其實响啟晴邨同埋呢個葵聯邨嚟講，其實係用咗係含鉛嘅焊錫料。咁亦都唔知道嚟講，其實呢啲含鉛嘅焊錫料係導致到食水係有鉛超標嘅問題。咁呢點嚟講，何標記先生嚟講，何文標先生响個庭上亦都係向公眾道歉咗。

至於嚟講，就係點解會導致到今次係買一啲係含鉛嘅錫料呢咁樣，何標記亦都响同事亦都係有解釋過，就係其實之前嚟講，其實佢哋就一路都係使用嗰啲係不含鉛嘅錫料，但係嚟講，就係响嗰個溝通上，今次嚟講係出現咗問題。咁因為嚟講，就係認識嗰個合約上有要求係用不含鉛嘅錫料嗰位鄭先生嚟講，佢係的確係提交咗啲物料畀呢個房署係批核，佢亦都嚟講，就係知悉嚟講呢啲物料都批核咗，但係最重要一樣嘢，呢個信息係冇將佢傳達番畀公司嘅採購部同埋地盤嘅打理。咁變咗嚟講，就係佢哋——鄭先生嚟講，就係一直以為嚟講，呢啲物料都係會响呢個雋景嗰度購買，而雋景嚟講，亦都係提供咗嗰啲不含鉛嗰個錫料畀佢，咁佢一直以為嚟講，呢樣嘢都係會一路咁樣做，當然喇呢樣嘢後來發現咗就唔係咁嘅問題。咁變咗嚟講，就係嗰個採購部嘅同事，佢對呢啲咁嘅焊錫料嘅認識唔知道，地盤打理嘅同事只係根據佢以往嘅資料嚟講，以往嘅經驗嚟講，去選擇購買咩嘢物料。

咁樣响啟晴邨嚟講，陳志（小？）華先生，佢之前嚟講嘅認識，就係呢啲所謂叫做「錫條」，咁呢啲錫條嚟講，其實就响雋景提供嘅嚟講，其實係含鉛，咁呢樣嘢就係就導致到嚟講，啟晴邨亦都係點解咁多地方嚟講，係用咗呢個含鉛嘅錫料。

黃貴雄先生佢負責打理呢個葵聯邨，咁佢嚟講，就亦都係跟住番啟晴邨嘅做法嘅啫，咁就變咗嚟講，就响嗰個葵聯邨嚟講，亦都係有

使用呢個情況，咁亦都導致到呢件事嘅產生。

咁好不幸地，就係雋景嚟講，其實佢都知道係呢啲咁嘅錫條嚟講，尤其是佢提供嘅嚟講係含鉛嘅，咁亦都其實從個量個度嚟講，佢亦都應該知道，呢啲咁嘅錫條嚟講，就係好有機會响嗰個食水嘅水管嘅銜接方面嚟講係會使用，但係佢就有提醒到何標記，亦都有話畀佢聽呢啲係含鉛，亦都有提交有關嘅 catalogue 去畀何標記等佢哋知道。

咁水喉匠林德深先生嚟講，佢都係應該係知道嗰個--唔應該使用呢個含鉛錫料嘅要求，但係响佢監察過程之中嚟講，由於佢嘅疏鬆，尤其是佢都係有處理到嗰個監管呢樣嘢，亦都有提醒過何標記有啲咁嘅要求，所以亦都導致到就係响呢兩條邨嚟講，都係有發生咗呢個問題。

但係有一點嚟講，就係何標記想強調就係話，並唔係因為省錢嘅問題，唔係因為慳錢嘅問題係用呢個含鉛嘅錫料，何標記先生提出過兩點嘅，希望委員會嚟講都考慮呢樣嘢，第一，就係話本身即係焊錫料嚟講，只係佔整體嗰個水喉工程嘅一小部分。即係就算嚟講，用番委員會當時考慮嘅數目\$320,000 嚟講，相對番响啟晴邨嘅\$570,000 嘅工程嚟講，其實都係講緊一個相當之細嘅一個份量，咁呢個係第一點。

第二點嚟講，就係亦都係不同嘅工人都有提過，就係其實用呢個含鉛嘅錫料嚟講，其實係相對嚟講係即係會係咁好多嘍。因為第一，即係嗰個溫度嘅問題，就變咗嚟講就容易係即係好多係流走咗；第二嚟講，就係工人個使用嗰個辦法嚟講，亦都係佢對於比較係--即係正如--即係小部分嚟講，佢就會將佢攞咗，咁就呢樣嘢嚟講，變咗個物料比較咗。

何標記佢哋自己事後，當然係講緊事後，佢做咗一個即係成本比較，响水泉澳邨嚟講，其實就係全部都係用呢個係不含鉛嘅錫線，咁相對番响啟晴邨同埋响個葵聯邨嚟講，水泉澳嗰度嚟講，以成本嚟計，其實仲低咗。

所以其實一路嚟講，成本唔係一個何標記嘅一個考慮，咁就希望委員會係採納番呢樣嘢，係去接納何標記嗰個陳詞，就係話，呢件事唔係一個偷工減料，亦都唔係一個偷天換日，而係只不過嚟講，就係嗰個用嘅工人，同埋個打理，同埋嚟講就係採購嘅同事嚟講，佢哋唔知道呢個焊料唔可以含鉛嘅要求嘅啫。咁當然何標記亦都講過事後會加強呢個員工嘅培訓同管理，咁希望唔會再有類似嘅事件發生咁樣。

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咁就呢幾點係何標記希望嚟講，就我响呢度係代表佢就向委員會指出。

除此之外嚟講，就...

主席：如果我話你個打理係知道有呢一個含鉛嘅要求，咁你有咩嘢講？

楊先生：我嘅陳詞就係話，陳少（小？）華先生嚟講，佢係個啟晴邨嘅打理喇，佢都有講咗佢話佢係唔知道嗰個錫條嚟講，係不含鉛嘅--即係 sorry，錫條係含鉛嘅，只不過佢之前用開。其實佢亦都唔知，其實係錫料係即係根據水務條例嚟講，係要不含鉛嘅，佢係唔知道。

黃貴雄先生嚟講，佢負責個葵聯邨，佢都好清楚講到，佢對呢方面嚟講佢係唔認識，佢唔認識其實就係第一，根據水務條例嚟講，係嗰個係要用不含鉛嘅錫料；第二嚟講，佢亦都唔知合約嗰度嚟講，係有個要求係要用不含鉛嘅錫料，咁只不過嚟講就係，佢嘅認識嚟講，就係話錫條嚟講因為溫度高，可以燒一啲開掣，又或者係嗰啲大嘅喉，咁錫線嚟講，就係一般嚟講係用開，就啲工人比較鍾意用，所以佢就訂呢樣嘢。

呢兩位打理，佢都唔知道嗰個要求，亦都唔知道嚟講，而家佢哋要求使--訂嘅，要求使用嘅嗰啲錫條嚟講係含鉛嘅。

法官閣下，呢個就係我個陳詞，就係話佢哋兩位都係唔知道嘅。

主席：唔。

楊先生：嘎，嘎，咁就呢點我希望委員會係考慮...

主席：唔係，即係如果我話佢知道，咁對何標記有啲咩嘢影響呢？你想唔想講？即係對於你哋何標記嘅立場有咩嘢嘢想講？

楊先生：就一路嚟講，就係委員會都留意到何標記嗰個本身嘅管理比較鬆散嘅。就何文標先生嚟講，佢其實係好依賴佢嘅員工就去究竟係採購啲咩嘢物料。當然喇，何標記都係強調過一樣嘢嘅，就係當然佢係响呢件事情佢承認佢自己犯錯，但係嚟講，佢基本上係--佢從員工嘅指示嚟講，就係話所有嘅房署嘅要求嚟講，要達足，要跟足。嗰個要求尤其是响嗰個 specification 裏面嘅要求嚟講係要跟足。

所以今次嚟講，如果真係有員工佢係知道，佢係即係使用咗嘅話，咁問題嚟講就係話，何標記本身佢嗰個 management，即是佢嗰個董--即係嗰個負責嗰面嚟講，佢哋係咪知道，或者係批准呢樣嘢呢，答

B

B

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案就唔係，咁呢樣嘢只不過就係响個管理上嚟講，响流程上出現咗一個問題嘅啫。

C

D

主席：係。

D

E

楊先生：係。

E

F

主席：係咁多嘞？

F

G

楊先生：係嘞，呢啲就係我想陳詞。

G

H

主席：好，唔該，請坐吓，講完就。咁冇人講嘢囉，今朝早，我哋食飯個囉嗰。晏晝兩點半，就我嘅理解就係金日同埋張達欽係會有律師代表嚟畀 oral 嘅 submission，不過就有 written 嘅 submission。咁基本上就係用番佢哋 interim 嗰陣時嗰個 submission，咁跟住就晏晝就係瑞安。

H

I

咁基本上就係用番佢哋 interim 嗰陣時嗰個 submission，咁跟住就晏晝就係瑞安。

I

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另外想提一提，就係星期四，就係因為 Mr McCoy 就有啲其他嘅 engagement，所以保華就會係星期四先至做呢一個 submission，咁就因為時間嘅關係，所以星期四我哋就係九點半就開庭。嘎，我哋...

J

K

另外想提一提，就係星期四，就係因為 Mr McCoy 就有啲其他嘅 engagement，所以保華就會係星期四先至做呢一個 submission，咁就因為時間嘅關係，所以星期四我哋就係九點半就開庭。嘎，我哋...

K

L

我哋...

L

M

陳宇文先生：Mr Chairman.

M

N

主席：係。

N

O

陳宇文先生：For Shui On, perhaps I would like to put down a marker here. I have been expressly instructed not to make any submissions on behalf of Shui On. So unless there are any questions you would like me to assist the Commission with, my submissions will be at most ten seconds.

O

P

陳宇文先生：For Shui On, perhaps I would like to put down a marker here. I have been expressly instructed not to make any submissions on behalf of Shui On. So unless there are any questions you would like me to assist the Commission with, my submissions will be at most ten seconds.

P

Q

陳宇文先生：For Shui On, perhaps I would like to put down a marker here. I have been expressly instructed not to make any submissions on behalf of Shui On. So unless there are any questions you would like me to assist the Commission with, my submissions will be at most ten seconds.

Q

R

主席：即係你嘅--純粹依賴你個 written submission 就係咁多嘞，係咪咁呀？

R

S

陳宇文先生：That's correct.

S

T

主席：得，好，所以晏晝就淨係金日同埋張達欽先生。我哋兩點半再繼續。

T

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下午 12 時 09 分聆訊押後

下午 2 時 31 分恢復聆訊

出席人士如前。

主席：係，Mr Wu。

胡先生：係，Mr Chairman and Commissioner, I wonder if I would be allowed to make my submissions in English? Because that's how I have prepared my notes.

主席：Yes.

胡先生：These are submissions made on behalf of Golden Day Engineering Co Ltd.

The position of Golden Day, based on the evidence of Cheung Tat Yam, the owner of the company, and the evidence of Golden Day's other employees, has been set out in Golden Day's interim submission dated 5 February 2016.

The key points of Golden Day's submissions in summary are as follows. There are just three points. The first point is that there does not appear to be any controversy that Golden Day as an organisation, though not necessarily all of its employees, was aware of the HA's requirement to use lead-free solder for the plumbing installation works at Wing Cheong Estate, Tung Wui Estate and Hung Hom Estate Phase 2. Point number 2...

主席：Can you repeat your point number 1, please.

胡先生：Sorry, point number 1 is that there does not appear any controversy that Golden Day as an organisation was aware of the Housing Authority's requirement to use lead-free solder for the plumbing installation at Wing

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Cheong, Tung Wui and Hung Hom Phase 2. So there was awareness of the requirement to use lead-free solder.

The second point is that it is also unequivocal in the evidence that all of the employees of Golden Day, that they were not aware of the existence of leaded soldering materials in the market in Hong Kong.

This evidence is corroborated by the evidence of Mr Leung Wai Keung, technical director of Paul Y, who said that in his over 30 years of experience, he thought there was only one solder material, and the evidence of Prof Fawell, expert witness appointed by the Commission of Inquiry, to observe that half of the time, people don't even know the difference between different solders. That's 16 February -- I am referring to the transcript -- page 188, lines P to T.

There is a further plethora of other corroborating evidence which the Commission of Inquiry has heard, some of which can be identified in the written closing submissions of the COI, such as the evidence of Ching Chi Fai of Yau Lee, that's at page 36 of the COI's submission; evidence of Chan Siu Wing of China State, that's also at page 36 of the COI submission.

主席：對唔住，呢啲全部唔係你個 interim submission 裏面，係咪呀？

胡先生：Not all of it, because...

主席：點解你唔入你嘅 final submission 呢？

胡先生：Well, at the time -- the thing is, we have not -- a lot of this is responsive to some of the points that have been raised in the final submissions that are filed by other parties.

主席：咁咪唔係好公平囉。即係你而家睇晒人咁嘅，咁你就之後--而家先至喺個--即係你自己本身就乜都有，你就淨係純粹睇人咁啲，跟住

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你就--即係人哋就有得講你嘅，就只有你可以講人。係咪咁呀？

C

D

胡先生：Well, I am not sure what to say to that, Mr Chairman.
You know...

D

E

主席：我哋一早講咗我哋個程序出嚟，係咪？你如果--因為你如果你話畀我聽「啊，我淨係講番我 interim submission 個啲嘢。」我絕對唔會出聲。

E

F

F

G

胡先生：In fact, a lot of what I am about to say...

G

H

主席：因為你而家講 1、2，我未聽到 3，我相信都係全部新個囉。

H

I

胡先生：It's not new, Mr Chairman, but it's just that I am referring to other...

I

J

主席：你講 1、2、3，我就要寫低你講嘅 1、2、3，點解你唔一早寫定 1、2、3 畀我呢？

J

K

K

L

胡先生：I can assure you, sir, that this is actually something that has already been referred to in the interim submission.

L

M

M

N

主席：佢哋啲 submission 個個都 refer to 其他人講啲嘢㗎喇。個個都 refer to 呢個人講過啲乜嘢，個個證人講過啲乜嘢，呢個講過乜，講過乜㗎喇，咁咪個個都唔使寫上嚟？係咪？即係你而家就--人哋就完全唔知道你想講乜，你就而家可以上嚟就話「啊，我又……」咁你覺得啱唔啱呢？你自己講。

N

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O

P

我畀一日時間你，你今日做咗佢，聽日交上嚟--今日交上嚟，聽朝早我哋聽你。

P

Q

胡先生：哦，好，okay，okay，thank you。Thank you, Sir。

Q

R

主席：係咪呀？啱唔啱呀？你--聽日晏晝我哋聽你。聽日下午。

R

S

胡先生：Thank you. I will do that, Mr Chairman.

S

T

主席：3 點 15 分。

T

U

胡先生：Thank you.

U

V

V

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主席：浪費時間，浪費大家嘅時間。明知道我哋個 rules 係點樣樣，我哋唔係今日、尋日先至講，上個禮拜再上個禮拜已經講咗畀你聽，係咪？好，不如咁嘞，interim submission 你有咩嘢嘢而家講咗先。

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E

胡先生：The interim submissions I have, it's really three points, Mr Chairman. The first point I have already told you. It's to do with ...

E

F

F

G

主席：唔係，我--咁你不如唔使講喇，不如跟番呢個 interim submission 講，好唔好？好唔好？咁唔使睇大家時間。

G

H

胡先生：In fact, I was actually going to -- what I have done is I have prepared my notes for this afternoon, and I can quite happily just give you the notes and it can replace my oral submissions, if you prefer to have it done that way, Mr Chairman.

H

I

I

J

J

K

主席：因為點解呢？我睇過你個 interim submission，基本上大部分都係 recite 啲 evidence 咋嘛，係咪？你又話呢個又唔知，個個又唔知，個個又唔知，咁講完嘞，其實你實際上要講嘅嘢好少，我有冇講錯？

K

L

L

M

胡先生：Yes, that is correct.

M

N

主席：咪係囉。你成個 interim submission 都係得兩版紙多啲啲。

N

O

胡先生：That is correct, Mr Chairman.

O

P

主席：你--不如咁，你用中文寫，你用中文講，你話畀我聽 1、2、3 喺邊一度搵晒出嚟，唔好睇時間。抑或你講吓。

P

Q

胡先生：In the interim submission...

Q

R

主席：唔好用英文，用中文，你呢個中文 submission。

R

S

胡先生：Okay。

S

T

主席：你 file 咁多嘢，都未試過有一篇嘢係英文嘅。

T

U

胡先生：Okay，好，okay。其實我都係講番，我哋其實主要係 3 個點，就係話主要第一樣嘢，就係喺第 2 個點嗰度，「張達欽先生、翁國財先生...」

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主席：第2點，即係乜嘢？

C

D

胡先生：我個 interim submission 嘅...

D

E

主席：第2段係咪咁樣？

E

F

胡先生：第2段，係。就：

F

G

「張達欽先生、翁國財先生、許宏新先生及黃錦文先生，表示在鉛水事件發生前知道用於接駁食水喉管嘅焊料需為無鉛。」

G

H

主席：即係知道喇，係咪？

H

I

胡先生：係，知道，係。

I

J

主席：需為無鉛吖嘛？

J

K

胡先生：係。

K

L

主席：你頭先話 “not aware unleaded solder in the market”，咩嘢意思呀？

L

M

胡先生：我頭先話係 “was aware”。

M

N

主席：哦，aware，okay。

N

O

胡先生：係，“Was aware of the Housing Authority's requirement”。

O

P

主席：唔，我啱啱知道嘞，講完。繼續。

P

Q

胡先生：第2點，就係話--就係喺第3段嗰度：

Q

R

「金日工程的證人表示，喺鉛水事件發生前，他們並未在意市場上焊料會有含鉛的情況出現，亦沒有留意所購及所用嘅焊料是否含鉛。」咁呢個係第2點。

R

S

主席：唔。

S

T

胡先生：跟住第3點，就係喺我嘅第4段嗰度：

T

U

「張達欽先生表示，喺鉛水事件發生前，佢唔知道錫線同錫條係有分別嘅。翁國財先生、許宏新先生及鄒師明先生亦都話，喺鉛水事

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件發生前，佢哋並唔知道錫線同錫條嘅成份有唔同，佢哋只知道錫線同埋錫條都係用於燒焊接駁銅喉同埋配件。林麗瓊女士、莫慧賢女士同埋黃錦文先生，佢哋都話根據佢哋嘅認知，錫線同埋錫條所指嘅同一樣嘢。翁國財先生、林麗瓊女士同埋莫慧賢女士佢哋都話佢哋並沒有察覺錫條同埋錫線嘅價錢係唔同嘅。張達欽先生亦都話喺計算項目投標價錢嘅時候，佢亦有考慮到焊料嘅價錢--佢亦有計到焊料嘅價錢喺入面，因為焊料所涉及嘅價錢係非常之少，佔整個水喉工程嘅總百分比亦都非常之微。」

喺佢個證供入面--喺張達欽先生嘅證供入面，佢係曾經提過係大約 0.3 個 per cent。佢係如果主席先生你記得，就係你曾經就喺張達欽畀證供嘅時候，亦都同佢計過一啲數，有個 80,000 釐--大約 80,000 釐嘅數字走咗出嚟。如果呢個 80,000 釐嘅數字相對於一個千幾萬嘅工程，張達欽先生亦都話即係個工程嘅--成張合約大約係千幾萬，如果係咁樣計番落去，其實都係講緊係 0.5 個 per cent，係佔個工程數目嘅非常之少。

許宏新同埋呢一個鄒師明先生亦都話，嗰個錫條同埋錫線嘅用途上係有分別，而佢哋兩個都話焊接嘅時間或者工序上係有分別。甚至乎佢哋兩個都話用錫條嘅損耗其實係大啲，因為當你揸住個錫條嘅時候，你揸住嗰一截係唔用得。同埋根據鄒師明先生嘅證供，就係話你嗰個錫條如果係過熱嘅時候，佢會流得好快，變咗就損耗亦都好多。

所以頭先講嗰兩樣嘢，其實就係--即係我第 3 點，就係話喺嗰個過程入面，金日工程有一個經濟上嘅誘因，亦都有一個工作方面上嘅誘因嚟去特登去用一啲唔合規格嘅焊料。

所以個總結，就係我嗰個 interim submission 嘅最後嗰頁嘅第 14 段。就係話：

「總結以上所講嘅嘢，金日工程嘅證人證供。金日工程喺鉛水事件發生前係應該知道水喉工程需要使用無鉛焊料，但係並唔知道市場上係有含鉛嘅焊料呢樣嘢出售，亦都唔知道所買番嚟嘅焊料呢係有含鉛嘅情況，亦都唔知道有鉛同埋無鉛焊料嘅價錢上有分別，亦都有將焊料嘅價錢躉到落標書入面，亦即係話有任何嘅誘因去使用呢一個含鉛焊料。因此，金日工程係有刻意促使，亦都有理由懷疑含鉛焊料會喺紅磡二期、東匯邨同埋榮昌邨嘅水喉工程中被使用。」

其實我要講嘅係咁多。關於呢個...

主席：你要講嘅係咁多？

B

B

C

胡先生：就呢個 interim submission 嚟講。

C

D

主席：咁你仲有咩嘢 final submission 要講？

D

E

胡先生：我諗我嘅 final submission，如果你係畀我聽日3點前入一份嘢嘅話，其實...

E

F

主席：你...

F

G

胡先生：...主要我都係歸納番一啲即係--我會歸納番其他人嘅證據，...

G

H

主席：咩嘢其他人嘅證據？

H

I

胡先生：即係呢一個調查委員會入面，即係其他人畀過證供嘅人嘅證據。

I

J

主席：點解--對唔住，點解要畀時間你呢，如果咁樣樣？

J

K

胡先生：其實亦都就有一啲--即係入面有一啲嘅指控，即係其實我哋亦都希望可以澄清番，譬如話...

K

L

主席：全部其他 subcontract--全部其他 main contractors、subcontractors，都係 follow 我哋嗰個 pattern 去做，點解你要咁特別？你要睇晒人哋又好、聽晒人哋又好先至入呢？

L

M

胡先生：其實呢個唔係話我有呢一個--即係特登要去做呢樣嘢。

M

N

主席：因為我嘅理解，我嘅理解，你好似寫過封信入嚟畀我哋，就係話你哋 rely on 呢一個 interim submission，冇其他嘅 submission 講嘞，啱唔啱？

N

O

胡先生：我諗我哋嘅意思係我哋有一個 written 嘅 final submission。

O

P

主席：點解冇？唔係，我嘅--攞番封信嚟，我嘅理解係。我記得我講得好清楚，你哋交晒所有啲嘢，我先至一次過放上網，唔畀大家抄大家，係咪？咁你...

P

S

胡先生：其實我有--我睇唔到我有咩嘢係抄大家，其實我有咁嘅...

S

T

主席：唔係，個個都唔會喺我面前認我抄大家㗎。冇人會話「哎吔，我睇咗人哋點樣寫，我先至寫㗎。」

T

U

胡先生：唔係，主要其實--主席先生，主要其實有啲譬如話--有一啲

U

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fraud 嘅 allegations，覺得我哋即係係因為寫咗出嚟，其實我哋都應該有一個機會去回應番。

C

D

主席：喂，咁你一早都知㗎嘛，你唔知㗎？

D

E

胡先生：唔係，其實...

E

F

主席：你唔 anticipate 呢一樣嘢㗎？

F

G

胡先生：唔係唔--我知道有呢樣，其實我哋個 interim submission 都有 address 呢樣嘢。頭先即係我哋入咗嗰份嘢，都係好簡單咁樣去處理，即係講咗呢樣嘢出嚟。但係...

G

H

H

I

主席：你而家即係話畀我聽你睇咗保華寫嗰篇嘢，你先至覺得有需要呀？

I

J

胡先生：其實主要係就住保華佢所講嘅嘢，我哋覺得係--譬如話係--唔係...

J

K

主席：你知道保華嘅立場㗎喇，一向都，係咪呀？你唔--你...

K

L

胡先生：其實我哋係有--已經 deal with 咗。喺我哋個 interim submission 入面，已經係講咗關於--即係已經 deal with 我哋認為...

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主席：咁你講你--咁你用你嘅 interim submission 講囉。因為你而家，如果我就咁聽你個意思，就即係「啊，因為保華寫咗嗰啲咁樣樣嘅嘢」，所以你而家就要特登駁喇。等一陣，對唔住。

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你哋度咁寫個嗰，“We write to inform the Commission that Golden Day has nothing to add to the interim submissions submitted on 5 February 2016 and will not be submitting any further written submissions.”

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胡先生：即係我嘅--我以為即係我哋嗰個 oral submission 嗰個 purpose，就係去 deal with 即係有啲咩嘢其他嘢，喺嗰個其他人嘅 interim submission--話 final submission 嗰度出咗嚟。如果我哋要 deal with 嘅，我哋可以即係一個 last opportunity 去 deal with 呢啲嘢，即係呢個係我--我係咁諗。但係如果即係呢個唔係嗰個 final submission 嘅 purpose 嘅話，咁 you know, I apologise for that。

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主席：你而家講埋佢喇，咁樣樣。我畀你講，講埋佢。

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胡先生：你意思...

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主席：唔使你寫，講。

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胡先生：即係講埋我今日本來要講嘅嘢，係咪？

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主席：係。

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胡先生：Okay。好，多謝你，Mr Chairman。咁我可唔可以--其實我主要都係都係讀番我呢一份嘢出嚟，如果你係 allow 我。其實唔係好長，It's only -- I have six and a half pages，但係 double spacing.

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Okay, so where I was, I was...

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主席：等陣，影印一份畀全部人。我哋休息五分鐘先。

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下午 2 時 53 分聆訊押後

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出席人士如前。

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主席：繼續。

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胡先生：Mr Chairman, in relation to basically the first page and a half of my written notes, I am just primarily referring to some of the transcript, so that I have some transcript references here, but I am conscious that if you don't want me to repeat all of this, I can skip all of this, and then people can read this themselves.

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So, in relation to the three points I made, I have already made them, so there are transcript references in my written notes.

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Then on the second page -- I don't particularly want

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to deal with the second half of my second page, because I am conscious of the fact that you don't want me to repeat what's written in other people's written submissions, because what we are saying here basically is we -- you know, we basically agree with China State's submission that there has been an overwhelming lack of awareness of the risk in relation to lead contaminated water or lead inclusion in soldering materials.

So onto the third page, perhaps I would -- this is the point that I really ought to be making, that taking into account the submissions that have been made and the evidence that the COI has heard, we believe that it would be hugely unfair to place all the blame or most of the blame on the plumbing subcontractor or the licensed plumber, regarding the use of non-compliant soldering materials, just because they happen to be at the end of the contractual chain and thus an easy target.

This is particularly the case, talking about the lack of awareness of lead contaminated or lead inclusion in solder materials, this is particularly the case with Mr Cheung, who became a licensed plumber in the 1970s, through an apprentice process, without the need for any formal training, so his level of awareness of solder-associated risks would not be the same as those who hold a diploma from a vocational training school today. This is a point that other people have raised as well in other contexts and I have provided the transcript reference here.

So now I turn to some of the points that I believe have been made wrongly or unfairly against Golden Day by Paul Y or China State, and primarily Paul Y.

First, there is a suggestion that Golden Day never had any intention to use the approved sample of non-lead solder in Tung Wui and Wing Cheong. This

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is a suggestion that arises from an answer given by Mr Yung on 6 January 2016, page 137, line U of the transcript. We say that the answer was taken either erroneously or entirely out of context, because I would like to refer the Commission of Inquiry to several answers and questions between Mr McCoy and Mr Yung that precede and follow that answer that I just referred to.

On 6 January 2016, page 137, lines J to M of the transcript, there was a question raised by Mr McCoy:

"Between June 2010 and August 2011, only 50 per cent leaded solder was used by Golden Day at Tung Wui Estate?"

The answer that was given by Mr Yung was:

"I cannot answer this one. This is because I only know about this recently, I have not seen the purchase orders issued by the company, and I have not paid attention to the materials delivered to site. I have only just seen these invoices and realised."

Then there's another question that follows that, at page 137, lines P to R of the transcript. Question:

"Again, it demonstrates that Golden Day only purchased lead solder?"

Answer: I see this, now."

I think I would like to emphasise the word "now", because this is his present recognition at the time when the question was raised.

Then there was another question after the one that he gave which gave rise to the allegation against Golden Day by Paul Y. It is at page 138, lines I to K. The question was:

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"This was your plan [referring to the plan to profit from the use of leaded solder] from the very start, in both of these projects?", suggested Mr McCoy, and the answer that was given was that:

"I do not agree because I do not know how the wrong order was placed, but the tin strip or tin wire, there shouldn't be a big difference in price, as far as I know."

So the point is the above answers are wholly inconsistent with Golden Day not having any intention from Day 1 to use the approved soldering materials. There is a total lack of knowledge by Mr Yung as to what Golden Day was going to order, let alone any intention to order any non-compliant materials.

So the only explanation we have for that answer is that there was a mismatch between the question asked by Mr McCoy and the simultaneous translation, which unfortunately there is no recording of, so Mr Yung was probably not answering exactly the question which was asked of him.

In any event, Mr Yung was in no position to answer the question for Golden Day, because he could not even answer a question as to how the wrong solder got to be ordered by the company and he had no idea as to the price difference. This is at page 138, lines I to L, of the transcript of that day. He was simply not responsible for and had no control over the procurement of solders or any other materials. Those who were involved in and/or responsible for the procurement of soldering materials, namely, Mr Hui, Mr Chow, Ms Mok and Ms Lam, did not know that solder samples had been submitted for approval and there is no basis to suggest that they had no intention to use the approved soldering materials from day one.

So, in the circumstances, the answer given by Mr

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Yung on 6 January at page 137, line U of the transcript, cannot be relied upon.

Coming to the \$80,000 profit, the so-called \$80,000 profit, it has been suggested that this was a finding or a conclusion of the chairman of the Commission of Inquiry. We say that this can hardly be the case. The calculation by the chairman is at the 6 January transcript, page 108, lines H to P -- page 108, line H, to page 109, line K. The chairman was primarily undertaking a rough estimate to gauge the order of magnitude of any possible saving which might result from the use of leaded solder. The COI had no evidence before it as to what the price of lead-free solder was at the time when Wing Cheong Estate was being constructed. The estimate has not taken into account the higher wastage for the use of solder sticks as already mentioned. So the \$80,000 cannot be characterised as a finding.

In any event, in relation to the \$80,000 savings, if there is such a saving at all, in the context of a \$10-plus million project, it equates to only about 0.5 per cent of the contract sum, taking a middle value of \$15 million as being the price of the contract. According to Mr Cheung, a more precise figure ought to be about 0.3 per cent, and that is on 5 January, page 91, lines P to S of his evidence. While this may be of some significance in comparison with the monthly salary of Mr Yung and Ms Lam, which the chairman has referred to, it would not be safe to suppose that Mr Cheung would put his reputation and his longstanding business in jeopardy for savings of relatively small sums.

I have already mentioned that it was small enough that Mr Cheung considered that it is not necessary to include it in his tender price.

Then there was a suggestion that Mr Cheung did not

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know what he was signing, when he signed the WWO46 forms, and this was something that was raised by Paul Y to basically discredit Mr Cheung, and it was said that it cannot be true that after he has been signing these forms for so many years, he didn't know what he was signing.

Mr Cheung is an elderly person who had by then been subject to cross-examination for almost a day, and he was visibly tired and confused. His answer should be considered in the context of his unequivocal acceptance that he understood the need to supply non-leaded solder for the various Housing Authority projects.

Lastly and most importantly in relation to Paul Y's allegation, and it's in relation to Paul Y relying on Mr Cheung's failure to procure the supply of compliant soldering materials, in circumstances where he had signed the subcontract for Tung Wui and allegedly understood the WWO46 forms which he signed amounted to a case of deceit.

Now, what we would say is that this Commission of Inquiry's terms of reference does not include any determination of civil or criminal liability of any party, and Mr Cheung therefore reserves his position in respect of any allegations of deceit or fraud which has been made against him, which we say are quite unnecessary. It should be sufficient for Mr Cheung to say, for the time being, that the allegations are strongly denied and he did not have the requisite knowledge at the time that leaded soldering materials were available in the market and would be supplied to Tung Wui before the excess lead in water incident came to light in July 2015.

There is a separate allegation of fraud and deceit against Mr Yung, which Paul Y says gives rise to a suspicion that Mr Cheung has been conspiring with Mr

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Yung in respect of the fraud and deceit.

I have already addressed the Commission of Inquiry that the answer that was given by Mr Yung on 6 January at page 137, line U of the transcript, which underpins Paul Y's allegation, does not make sense and cannot be relied upon. So it follows that any allegation of conspiracy to defraud is denied by Mr Cheung.

As to China State, it is incorrect for it to say that Golden Day had no system or regime in place to ensure that its procurement and site supervision staff were in the know about what materials had been approved and to be ordered. It is the evidence of Ms Mok, on 12 January 2016, page 21, lines M to O of the transcript, that in receiving orders for materials from the site supervisors, she would place orders in accordance with the materials tables attached to the WWO46 forms. A similar answer was given by Ms Lam, on 7 January 2016, at page 16, lines P to S of the transcript.

The point here is that the ordering -- there is no complete disconnect between the people who prepared the sample submissions and the people who did the ordering, because people at the purchasing department were aware of the Housing Authority's requirement, which are the same as what has been set out in the WWO46 form for the WSD, but it just so happened that the approved solder, soldering material, by the Housing Authority did not appear in the WWO46 form and therefore the wrong soldering material was being ordered.

So, separately, the way in which China State seeks to discredit the evidence of Mr Hui, at paragraph 105 of their written closing submissions, is not warranted. According to Mr Hui's answer, at 11 January 2016, page 11, lines S to T -- just a little bit of background in relation to this is that Mr Hui was being challenged in relation to how he knew about the WL50D, (50 力錫

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條), being problematic before this particular type of soldering material was -- the name of this material came out from the press and then from the COI proceedings.

On 11 January 2016, at page 11, lines S to T, Mr Hui basically explained that he was using the wrong reference; he really should have said "solder stick", and the name "WL50D" was something that he picked up later, in the course of the preparation of his witness statement. So that point really has been clarified.

As to China State's criticism, at paragraph 103, of Mr Hui's lack of knowledge of the sample submissions in respect of soldering materials, and the delivery notes of a sample of FRY materials to site being unbelievable, one should bear in mind that the evidence of both Mr Cheung, that is 5 January, page 51P to 52H, and Mr Yung, 6 January, page 42Q to 43G, that the samples submitted by Golden Day were in the form of large sample boards containing various items pre-hung by Prosperity. In this context, the delivery note referring to a sample of FRY having been delivered to site does appear to be a bit odd, and it is not inconceivable that a roll of FRY soldering material among various items being hung on a large sample board might have escaped Mr Hui's attention.

So it is submitted that Mr Hui did come across as a straightforward and a truthful witness.

Lastly, in relation to the suggestion in paragraphs 151 to 152 of the COI's written closing submission that there might have been some concerted efforts to cover up -- to protect, you know, Mr Cheung in relation to the preparation of the so-called forged invoices, we would say this. It is accepted that that such an event should have occurred was unfortunate, and it could only be foolishness and naivety that could have led to such conduct. However, it is accepted that forgery per se

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was not a cause of excessive lead in drinking water. As regards whether there was any concerted effort to protect Mr Cheung, it is submitted that there is no evidence to support this suggestion. There was nothing "convenient" about Mr Cheung being absent from Hong Kong at the time. Mr Cheung was away from Hong Kong several days before the lead water incident came to light. Before that, it cannot be said that Mr Cheung would have predicted the scale of the saga and considered it necessary for him to disappear from Hong Kong. If it were to be suggested that Ms Lam was not the real forger and there was a concerted effort to save Mr Cheung, then there are two flaws in relation to this suggestion. Firstly, one cannot discern from the evidence who that other party could have been and why Ms Lam would consider it necessary for her to claim responsibility for the forgery, for the alleged forgery.

Secondly, there's no corroboration between Mr Yung and Ms Lam's evidence that there was any concerted effort. Mr Yung's evidence was that his instruction to Ms Lam was only to find the delivery notes for solder wires. That's 6 January 2016, page 118, lines F to Q of the transcript. Ms Lam, on the other hand, was adamant that she had understood Mr Yung to mean that she had to produce the forgeries. What is not disputed in the evidence is that the word "forgery" was never mentioned in the conversation. Ms Lam, in her evidence, on 7 January 2016, page 93, lines H to P, does not deny that based on Mr Yung's instructions she could have found out from Prosperity whether there were delivery notes in relation to the lead-free solder.

So we would agree with what the COI's counsel said, that there is simply insufficient evidence for any firm conclusion to be drawn as to the motive or the existence of any cover-up.

Those are my submissions.

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主席：係咁多？

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胡先生：係咁多。

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主席：唔該。

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胡先生：Thank you.

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主席：聽朝早就係十點鐘我哋再繼續。仲有冇人有問題？冇問題，冇問題，
唔該。

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C Tuesday, 15 March 2016 C

(10.03 am)

D (Transcript of simultaneous interpretation D

E except where otherwise specified) E

Submissions by DR WONG

F DR WONG: Chairman, Commissioner, on behalf of WSD, I will F
G now make my final submissions. G

H We have provided a written submission to members. H
I Unless the chairman has other instructions, I don't I
intend to repeat in substance the final submissions. I
J I will take it the Commissioners have already read the J
final submissions. J

K I will now respond to the other parts of the K
L evidence. First of all, I would like to respond to one L
issue, and that is the lack of awareness issue. L

M In this hearing, this is one of the major issues M
N mentioned. Chairman, you have heard a little evidence N
O and submissions from many witnesses. The WSD Task Force O
P report has also recorded that we are of the view that P
Q the construction industry has a lack of awareness. But Q
R this Commission has an advantage, and that is you have R
seen many witnesses. You have also witnessed a lot of
cross-examination. R

S Now, is there in fact a lack of awareness? I think S
T this is going to be a factual judgment. That factual T

C judgment will have a bearing on the judgment of this
Commission on other issues. C

D In the final submission of the Commission's counsel, D
E may I show members that paragraph, paragraph 44. The E
F Commission's counsel, after dealing with lack of F
G awareness, in paragraph 44 on page 19, the last line, he G
said: G

H "(In English) This casts considerable doubts on HA's H
I position on its lack of awareness of the risk of the I
presence of lead in drinking water. I

J 45. Once hazards have been identified, it would be J
K important to conduct risk assessment so that priorities K
L could be established for risk management. As stated in L
WHO's Water Safety in Buildings ..."

M I won't go on to read more of that paragraph. M

N Similarly, in the final submission of China State, N
O may I invite Chairman and Commissioner to look at O
paragraph 37 in the final submission of China State. O

P CHAIRMAN: What is the tab? P

Q DR WONG: Tab 4, page 14, paragraph 37. China State Q
summarises here the evidence of Mr Ng Tat Kwan, the CBSE Q
of the HA: Q

R "(In English) ... (given Ng's evidence that this was R
S 'common sense', 'lead is hazardous to health' and it was S
T 'nothing new'), such knowledge was apparently not T
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transferred to the then senior officers within HA/HD,
including the various chiefs comprising the DCMB."

CHAIRMAN: Please wait. Tab 6, paragraph 37?

DR WONG: No, tab 4, Chairman. China State, page 14,
paragraph 37.

CHAIRMAN: For us, it is tab 6.

DR WONG: Okay. Sorry, I don't have tab numbers in my
bundle.

Paragraph 37. It mentions the evidence of Mr Ng
Tat Kwan. He is of the view that lead is hazardous to
health, and it is only common sense and that it was
nothing new.

You also remember, Chairman, when Paul Ho gave his
evidence, he shared the same view, whether lead is
hazardous to health and whether it is common sense. If
it is, then when construction materials come into
contact with water, then would that awareness be a kind
of common sense? This is an important point, because
after the incident, many people in the construction
industry reflected to the WSD and other parties that
they had a lack of awareness, and because of this the HA
said that because of a lack of awareness they relied on
the WSD, who is the regulator, to inform them and to
alert them that they should prevent that risk from
taking place.

But, as the landowner or other parties, is it true, as they claim, that they have a lack of awareness of this risk? Should the Commission accept the view that they had a lack of awareness? That will be left for the Commission to decide.

But our final submission is that after 60-odd days of taking evidence, including that from three licensed plumbers, and even if they had been penalised, their evidence is clear. I have also cross-examined the three licensed plumbers. Their evidence is clear that they knew they should not use leaded solder. Why not? Prof Fawell has said that this is actually common sense and we should ask why we should not be permitted to use leaded solder.

Now, after the incident, people have been pointing fingers and they said that the WSD did not alert them, that the WSD should have alerted them to that risk, but since the WSD did not alert them, they did not pay attention and therefore there was a lack of awareness. But is that the fact? We have reservations about this.

In our chapter 2, we have explained in detail and analysed it in detail, but because of time constraints I will not go into that chapter on lack of awareness.

If we look at the final submission of the Housing Authority -- I don't know what tab it is -- in paragraph

B28 -- this is on page 22, paragraph B28 -- the HA says,
the last line:

"(In English) Had HA been made aware of the risk of
presence of lead in solder joints and of such presence
leading to excess lead in water, it would have put in
place suitable control and monitoring measures to
prevent the use of non-compliant soldering materials in
the plumbing system of public housing estates."

In other words, they said if they had been aware, it
would have had the capacity and ability to put in
suitable control and monitoring measures.

Now, if there is going to be a factual judgment that
the HA or other stakeholders in the industry have that
awareness, then that would take us back to our final
submission, quoting Prof Fawell. Is it really that
people have not identified that risk in this incident,
that they were aware of it? Maybe not. As we said in
paragraph 7 of our own final submission ...

CHAIRMAN: Continue, please.

DR WONG: Yes. As we said in paragraph 7, quoting

Prof Fawell:

"(In English) ... clearly a risk assessment had
taken place, because Hong Kong has recognised that lead
was a problem, and lead solder and high lead copper
alloy fittings are not permitted for use ... and the

risk assessment says that it is likely to be a problem ... Where the problem has come has been the operational monitoring [and] that that's actually working. I understand that can be quite complicated, but that's where it's broken down."

And, Chairman, when Prof Fawell gave his evidence, you mentioned that not a lot of BS were in schedule 2.

CHAIRMAN: This risk assessment, is it about the 1938 risk assessment?

DR WONG: It points to both 1938 and 1987.

CHAIRMAN: Why was there a risk assessment in 1987?

DR WONG: When the BS was changed, the industry knew that they should not use leaded solder.

CHAIRMAN: No, I'm not talking about risk assessment for the industry. I'm talking about WSD risk assessment. In 1987, what risk assessment did the WSD undertake? 1938, I understand, and then you banned it.

DR WONG: Chairman, on risk assessment, I would like to address the Commission on one point.

CHAIRMAN: You cited this paragraph but then you were just only referring to the one done in 1938?

DR WONG: Right, yes.

Let me refer you to paragraph 9 of my closing submission. That is:

"(In English) ... the clearly stated requirement

C that only unleaded solder must be used should have
D raised question as to why this was sufficiently
E important to merit a specific mention."

E So the question is whether the regulators should
F repeat and repeat again and remind the sector that they
G must abide by this, and Prof Fawell's opinion is that,
H in the Q&A:

H "(In English) That is where the risk assessment and
I then the highlighting of this -- the reiteration of this
J risk comes in."

J (Chinese spoken). Prof Fawell:

K "(In English) Not quite. I understand what you are
L saying, but that's not quite correct, because nothing
M had changed, basically. Nothing had changed. So the
N iterative process is something has changed and therefore
O you go back to the beginning. Nothing had changed.
P Lead was still a problem, if you put it in.

O Question: Yes.

P Answer: What the failure was was at the point of
Q the operational monitoring. So one has to say, 'Okay,
R if we are going to fix this -- we are not actually going
S all the way to the beginning; we need to make sure that
T our operational monitoring is both practical and
U effective'."

T Let me go back to the risk assessment point. There

are quantitative risk assessment and also qualitative risk assessment. So, Chairman, in the hearing, you have asked about what happens to copper; is there a risk assessment of copper in water? Of course, for the WSD, we have never made a calculation or come up with statistics or a formula, saying that there should be a copper index or what. Then for every metal and every type of bacteria, we would do that type of risk assessment -- that's not what we have done. But for Mr Chan Kin Man, the chief chemist's evidence, he said there is the risk in water, and his evidence is that the WSD has done a qualitative risk assessment.

In my closing submission, we have detailed the qualitative risk assessment. For this qualitative risk assessment, there are several aspects. One of course is the substance is banned by the law, and also we have put in a system, and that system is to monitor the materials used, and whether the correct materials have been used. I will explain the LP and AP system in a minute.

Third, as what the Commission's QC's closing submissions said, in the water sampling exercise there is fixed-point sampling and also random sampling. Of course, are they comprehensive enough, that's open to query, because after the incident we know there is an escalated risk level, so we have to again assess the

C risk level. C

D But before the incident, as the Commission's counsel D
E said, we have done sampling at fixed points and other E
F locations. As long as the sites are accessible, we are F
G doing water sampling including sampling for lead. We G
H acknowledge there are constraints to water sampling, H
I because there are locations which are inaccessible, so I
J we are asking the shopping centres and property J
K management companies to work with us to do water K
L sampling. Is it the case that before the incident there L
M was never any risk assessment done? No, that is not the M
N case. There has not been a quantitative risk assessment N
O on every metal; that's true. O

P But before the incident, is it the case that there P
Q was never any assessment of lead in water? We don't Q
R agree that that's not been done. We just do it by R
S qualitative methodology. S

T As we said in our closing submission, in the next T
U paragraph, paragraph 10 -- well, that's what the U
V Commission's counsel also said -- we can easily use V
20/20 hindsight and say certain things.

"(In English) ... suggesting that there would be
additional and quite complicated steps at that time,
without having the knowledge of what's happened since,
I think would have been showing a level of foresight

C that might be regarded as quite spectacularly good." C

D I would say that the regulator had put in D
E a mechanism or a system which has worked before the E
incident, to our knowledge, I would say.

F I would like to refer the Commission to the closing F
submission of the HA. H1. That's what he says:

G "(In English) There is no denying that if the HA and G
H the AP had been aware of the risk of misuse of lead H
I solder in joining copper pipes, its quality control and I
J monitoring mechanisms at different stages of public J
K housing construction could have been tightened up so as K
L to prevent the misuse of lead solder. However, it is L
M clear that at the material time the HA and the AP had M
N reasons to believe that the procedures that were in N
place to prevent the misuse of lead solder were adequate
and without the benefit of hindsight, it would have
required a spectacular level of foresight for them to
have done more."

O (Chinese spoken) -- O

P CHAIRMAN: You are not agreeing? I am not agreeing to the P
Q use of the word "spectacular". Q

R DR WONG: We don't agree to the use of that word either. R

S Chairman, you will remember that during the S
T cross-examination, I have cited Prof Fawell's words, and T
U the HA's counsel has asked Prof Fawell to extend the U
V

charity to the HA, and Prof Fawell said in the negative.

Chairman, I wanted to point out -- well, after the incident, we knew what happened, but before the incident, we would not have anticipated, as what Mr Martin Lee said, we could never have dreamt, that the monitoring system, with the use of the AP and LP, would trigger such problems, because we assess that the risk level to be low.

Of course, if the risk level is assessed to be high, then the behaviour, our behaviour, would have been very different.

Chairman, I would like to point out that on the point of lack of awareness, coming back to what I wanted to say, if the various stakeholders have adequate awareness, and after the incident there are suggestions on whether the WSD can do more, can take a step forward more and alert the stakeholders -- should we be going back to the drawing board and do everything all over again; risk assessment, reiteration, process and so on? Of course I agree with the Commission's counsel's remarks that in future there should be such a system in place. This is something that we are willing to explore. But on this particular incident, the lead in water incident, if without the foresight that I mentioned, then the stakeholders should have

inadequate awareness and they don't know about the risk?

No.

They said, "The WSD is the water expert and we should have been notified of the risk, and since you haven't alerted us, then we are unaware of the risk, and that's why, in my material monitoring system" -- that's what the HA said, that the plumbing material takes up a minor portion of the materials used in the project -- or tiny portion. "So there are over 1,000 materials to be dealt with. Since WSD has not reminded us in particular on this particular item, so sorry, I didn't pay any attention to it." Should it be like that?

I hope that the Commission can take a balanced view. Of course, when something happened, the regulator generally would become the target of criticism, but on this particular incident, the WSD colleagues have been dedicated to their work, to ensure that drinking water in Hong Kong is clean. We would not claim too much credit out of it. We want to provide clean and safe drinking water to Hong Kong people. We don't want people to have this misleading impression that the WSD is just doing what is adequate and not doing anything extra.

But on the point of lack of awareness, that there should be more or clearer view -- so this is my first

point.

CHAIRMAN: Let me try to summarise your first point. You think that they do have adequate awareness; is that right?

DR WONG: Yes.

Second point. I would like to talk about consumers, agents and the property owners' responsibilities. If you look at B9 to B11 of the HA's closing submissions:

"(In English) ... as a consumer under the WWO ... as one of the stakeholders under the concept of [WSP] ...

...

HA is not under any statutory duty to enforce the plumbing standards prescribed by the WWR."

I agree with that. I will talk about the enforcement issues in a minute.

But if you look at B23, on page 20, in the last sentence:

"(In English) ... whereas the misuse of lead solder may be caught by section 14 of the WWO which makes it generally an offence for anyone to construct or install an inside service with unauthorised pipes and fittings."

Of course, I would like to say that the WSD as a regulator has its own responsibility, but as the property owner and as the one who is monitoring those who are using the materials, is it that they are free of

any duty at all? No. If we look at the WWO, there is a statutory duty imposed upon them, and that is that they should be using prescribed pipes and fitting materials. So that's why that they have put the same into the main contract, and that is in the schedule too, materials have been incorporated into the main contract.

So that's why we think the property owner may not be a water expert. It is an expert in building materials.

Under section 7 of the WWO, they have respected -- well, if they do that, then they would be provided with water connection by the WSD. Of course we agree that the HA and other property developers and owners should not just be looking at water. Of course, they are looking at other aspects like electricity, ventilation, fire service installations as well. All these aspects have to be taken care of by them.

But for other aspects, the materials used in ventilation, fire service and electricity, then they have a duty to make sure that the right materials are used in building these systems. For example, lifts and air-conditioning systems, which may have impact on people's safety and the living environment, and if there are problems in those areas, is it the case that the regulators of these other areas should be held liable? So I would like to highlight this.

There is one minor point that I would also like to highlight. In the submission, the HA mentioned two times this particular memo, that is B15.4, page 40128. In 2002 they switched to the use of copper pipes and there was a memo issued by the WSD, soliciting opinions. We asked the WSD, "You are the water expert, you did not remind me; you did the assessment for me. If I am going to use copper pipes, what would be the risk vis-a-vis water?"

On this point, I would just like to say that on 26 January 2016, when Counsel Shieh said this, on page 66 to 67 of the Chinese transcript -- I will not show it, I will just give the reference to Chairman and Commissioner -- Mr Paul Shieh asked Mr Ada Fung about her reliance on the memo, and Mr Shieh referred to the memo at page 40128; "It was not about materials at all?", and Ms Ada Fung said "yes, but then materials are related to drawings", and Mr Paul Shieh said, "No, it might not relate to materials, but the thickness of the pipes."

Then the WSD said -- the WSD might not be aware of the soldering materials, and the answer was yes. So is it that they can rely on the memo to say, "I have already told the water expert I would use copper pipes, and they did not remind me of the risk of using copper

pipes", and so they could rest assured, so they did not use it.

I am of the view that as the property owner or landowner, the HA has certain statutory duty, and the statutory duty should be shouldered by it.

I would summarise my second point. I would invite Chairman and Commissioner to take a look at the HA's submission. That's in F1, page 35. It says:

"(In English) Under the terms of the main contract between the HA and the main contractors, although it was permissible for the main contractors to sublet the plumbing works, the main contractors remain responsible for complying with the main contract. Hence, it was undoubtedly the responsibility of the main contractors to ensure the use of correct plumbing materials (including solder) by the plumbing subcontractors."

My question is if the main contractor has that contractual duty, then shouldn't the HA have a similar duty under the law, that it should have a similar statutory duty?

The third point, Chairman and Commissioner. This has to do with the role of APs.

I remember Mr Yim Yu Chau, the chief engineer, said in his evidence, "No, I rely on APs; if they sign, I would sign", and it was said, "It is just an AP, APs

C know nothing about water works, so you cannot rely on
D the APs because they know nothing." You are talking
E about very specialised things. D

E Chairman and Commissioner, in re-examination, E
F I brought the Chairman and Commissioner to look at the F
G review of the AP system done by the WSD in 1995, and G
H I showed you a letter. That's page 19095 in C21. This H
I is the Hong Kong Institute of Architects who replied us, I
and then we can contrast it with the HA's submission, H
paragraph E7. I

J First of all, let us look at the letter, J
K paragraph 2: K

L "(In English) Under the current practice, the L
M authorised persons, who act as the co-ordinators of M
N buildings works under the Building Ordinance, are the N
O qualified professionals who look after the design and O
correct use of water supply plumbing work and the N
correct use of pipe material in building projects." O

P In 1995, the architects have the awareness that P
Q under the current practice, they had the responsibility P
R to ensure correct use of pipe material in building Q
S projects. If they say, "We didn't know, we didn't know R
T how to do this", then they should have said so, that R
U this was not their specialty. S

T But no. At that time, they: T
U
V

"(In English) recommend that authorised persons ... should be recognised as qualified persons to be registered by the Water Supplies Department for this specific purpose.

Members of our Institute that have qualified for the List 1 of the authorised persons would have acquired the basic knowledge of design and installation of plumbing system in their university education and professional training. They would have supervised periodically the carrying out of plumbing installation as part of their inspection duties on building works."

Of course, after the incident, the viewpoint is different. Let us now talk about after the incident. But before the incident, in 1995, when the system was reviewed, as to whether there should be registered persons, this was the answer we got: "So we trust the system; we trust APs can perform the function that they can double-check the LPs."

Under that premise, let us look at paragraph E7 of the HA's submission. It says:

"(In English) It makes no difference that later on in 1995 the WSD had in a letter to the Hong Kong Institute of Architects mooted the idea of designating an appropriate group of persons to take care of the design and installation of water supply plumbing work

and the correct use of pipe material in building projects and that was met with a favourable response.

That proposal never came to fruition and until and unless an AP has been duly registered by the WSD as a registered person for the stated purposes, he cannot be taken to have assumed the responsibility of the proposed registered persons."

Chairman and Commissioner, I think there is a problem of logic in this paragraph. They say, "Unless I am a registered person or else I cannot assume the responsibility". However, the letter states that it is the current practice. In other words, they are already doing something to propose registered persons, but now they are saying, "Unless you register me, you give me the status, I cannot assume the statutory responsibility."

We think that this is illogical. In 1982, because building projects became more and more complicated in Hong Kong, at that time, it was like three decades ago, we worried that LPs could not fulfil their duties, so we introduced the AP system.

CHAIRMAN: You mean you were worried that LPs could not fulfil their duties? I don't think that was the reason.

It was because there was a lot of testing to be done.

DR WONG: That was one of the reasons.

CHAIRMAN: No, I only heard that there was a lot of testing to be done. I never heard that you were worried that the LPs could not fulfil their responsibilities. Where was that said?

DR WONG: I can find the reference for you. My reference is to the complexity of work.

CHAIRMAN: No, it was not about worrying that they would not be able to fulfil their responsibilities. It was just that things became more complex.

Please continue.

DR WONG: I would like to say, if you have an AP on top of the LP, you cannot possibly say, as Mr Yim said, that as long as the AP signs it, I will sign and I will not have an independent system to verify whether correct materials have been used. As our assistant director, new works, Mr Leung Wing Lim said, the chief architect, the project manager, should have an independent system to do periodic supervision, and if you say, "Okay, even if I countersign, I rely on the LP who signs, and then I will sign."

CHAIRMAN: Okay. You don't have to go into that. Of course that doesn't work.

DR WONG: Okay. Then, Chairman, I will not labour on this point.

Chairman, can I please give you the reference? This

is the point about LP. This is in the first witness statement of Lam Ching Man, paragraph 15:

"(In English) With the growing sophistication and enlargement of the scale of inside services across Hong Kong, the WA recognised that relying on LPs to ensure quality of inside service may not be adequate."

CHAIRMAN: Yes, okay, but it doesn't mean that they are incompetent.

Please continue.

DR WONG: Chairman, I would like to go to another point.

That is WWO046 and WW0132, these two forms.

In the Commission's counsel's final submission, he used a lot of coverage to explain why, in signing part I of WWO046, they did not take responsibility. This is in the HA's final submission. They also said that in signing form 132, that has to do with the draining of water and has nothing to do with drinking water.

Chairman, in our final submission, we have also devoted a lot of coverage on those points and I would not repeat them. I would just like to say that talking about WW0132, if it is just about draining of water and that has nothing to do with drinking water, I think it cannot hold water. This may be a clever argument advanced by counsel after the incident, but when they

signed WWO132, it was not just about the draining of water.

Chairman, I would like to turn to another point which is very important. This is about enforcement. I am aware that, Chairman, you and the Commissioner raised concern about one point during the hearing and we know it, and that is whether the WSD will set the standard, whether it is in accordance with BS or other guidelines.

Chairman, you asked, "You would have to enforce the law", and you cited two examples, I remember, Chairman. You talked about parking on double yellow lines and whether there would be a fixed penalty ticket issued, and secondly, the pharmacies, that you should patrol the pharmacies to see whether they comply with the regulation on selling of medicine. So is it that the WSD did not enforce the law and how did it enforce the law if it had? And is it because of this that this incident was caused?

Chairman, I would like to raise two points with the Commission for your reference when you deliberate on this issue. First, as a regulator, there are many ways that it can do the regulation. Number one is policing. But then there is another way, and that is to put in a system.

Let us use the example of the pharmacy. If we are not talking about a street-side pharmacy, not the street-side pharmacy, but the pharmacy at the Queen Mary Hospital. If in the hospital --

CHAIRMAN: Queen Mary Hospital, it is not under the regulation of the Pharmacy and Poisons Ordinance?

DR WONG: I know. I am just citing this as an example. If the hospital already has a system to say there is a monitoring system in the purchase of medicine, that there is a procurement department and there would have to be prescription by doctors and the nurses would have to double-check when prescriptions are filled -- then, with that system in place --

CHAIRMAN: But then no one monitors it. The Department of Health does not patrol it and it is not monitored under the law.

DR WONG: Maybe my examples are not exact.

CHAIRMAN: Of course, they are not even correct.

DR WONG: Let me turn to the example of parking. Of course, for street-side parking, say if you have a private car park within a private estate, it has security guards and a property management company, and there is a system for certain parking facilities, within that car park, say in the private premises, so is it the case that a policeman on top of what's being done within the

private property, do something inside the private
property car park?

CHAIRMAN: I don't think that is a right analogy.

DR WONG: Chairman, maybe the two analogies do not work, but
I would just like to highlight this. The basis for
enforcement -- there has already been in place a system
whereby the LPs are monitoring and making sure that the
right materials are used and they will sign WWO046 to
tell WSD that the correct materials are being used. So
that's the first level of protection or safeguard.

Then, at the site, there's a site foreman who will
do continuous supervision and also periodic supervision.

Then the project manager, the AP, will then sign
also to tell the WSD that the materials are complying
with the standards. It's not the case that we don't
have an open mind and that we would not consider
whatsoever in future, that improvements cannot be made
in the future.

But I would like to tell the Commission that on the
basis of what's being done, if we are to do interim
inspections, surprise inspections, are these measures
cost-effective? Are these practicable and feasible?
This is something that we have to consider, because in
the second point I would also like to mention that we
have done a Benchmarking Study, and actually we have

explored internally this issue, we have done a Benchmarking Study to see how water regulators all over the world are dealing with this. We have done a Benchmarking Study which has been looked at by Prof Fawell and he agreed to the study, and that is the world over -- well, let me stress again that we still have an open mind and if the Commission suggests that we should have surprise checks, then we have an open attitude and we would not say no outright.

But we would like to tell the Commission that, generally, we have looked at the UK, Singapore, Canadian, the US water regulatory authorities and how they do their enforcement, and they will just rely on the LP's self-certification. Hong Kong is more advanced because we have the AP layer.

CHAIRMAN: That's not the case in the UK? Drinking water inspection in the UK will ensure that the water quality at the consumer's tap is also guaranteed. They will do testing there, and after the tests have been done they will tell the consumers whether the water quality is in order or not. So please don't say that the UK doesn't have that kind of system.

DR WONG: Chairman, I would talk about the water sampling system in a minute. There have been suggestions that we should be the last gatekeeper in water sampling. But

this is not the point that I am making here. I am talking about the construction site doing interim inspections and spot checks on building materials at the sites. My understanding, perhaps I am wrong, I stand to be corrected, is that according to the benchmarking report for interim inspection, that's not being done in the UK.

CHAIRMAN: What's the problem with Hong Kong being more advanced, taking an extra step?

DR WONG: Well, I don't think -- no, I am not saying there is a problem with that approach, but all I want to say is that, Chairman, before the incident -- I said twice already, it's not the case that we would not consider it in the future.

CHAIRMAN: We are not aware of the situation in other jurisdictions. We have reviewed the regulations and we said that the WSD has a lot of power in respect of the piping materials, et cetera. And of course you know there have been suggestions all the time that greater power comes greater responsibilities so we are aware of that.

DR WONG: Chairman, I'm not disputing that.

CHAIRMAN: Well, if you have power, you have responsibilities, and responsibilities are equivalent to duties.

DR WONG: Yes. Chairman, I would like to say -- there are two points.

CHAIRMAN: I don't know whether this is being done in other places, like the UK. I don't know whether there are regulations in the UK stating that the regulators can mandate other people to do tests. So I can't say that for sure.

DR WONG: Chairman, we can do some more research and provide you with further information.

CHAIRMAN: Don't do that.

COMMISSIONER LAI: I don't think it matters what others do, because we would not say that if other people don't do it, we won't do it.

Coming back to the point of enforcement, and you said, "Because this is not being done in other places, why should we be doing that in Hong Kong?"

DR WONG: Don't misunderstand me. I have already said this twice. It's not that we will say a categorical "no" not to do it because the overseas jurisdictions are not doing it.

COMMISSIONER LAI: What you say, the rationale is this: "Because we have done what others have done, and for whatever has not been done in other places, we might not do it."

DR WONG: Chairman, I would like to say that before the

incident, we were not aware that there was a risk in the system, that there was a problem with or breakdown in the operational management aspect, as what Prof Fawell said. We have been following the approaches adopted by other jurisdictions, in terms of inspections.

So, before the incident, that was the approach adopted by us, so this is what we have tried to explain to the Commission. Under the regulation, we do have power, I admit, but then what we have been doing is within reason. That's been put in our submission.

Now, looking forward, can we do interim inspections, and what about the extent of those inspections? In our closing submissions, we spent quite a lot of paragraphs to explain our stance and views. So I would like to point out to members that in terms of law enforcement, we would consider these. This is not something that we would not consider. But I would like to put the enforcement approach in context, and that is Hong Kong does have an LP and AP system, and on site there is another monitoring system, in terms of material control. So this is the background to material control in Hong Kong.

Now, Prof Fawell said that our monitoring system doesn't have any problem. The question is whether this system has been fully implemented. In HKIE's and HKIA's

submissions --

CHAIRMAN: That's where the WSD comes into place and that is how you should effectively enforce the regulations and the law.

DR WONG: Chairman, I have said this three times. I have said that we will not rule out this possibility, that we would do it in the future. But I would like to emphasise again that the HKIE and the HKIA and the task force of the WSD, they have come up with reports, and their conclusion unanimously is that as far as material control on site, the most effective approach is to have a designated professional doing the work.

CHAIRMAN: Well, I don't dispute that.

DR WONG: Can we have a designated person to do the work or designated professional to co-ordinate material monitoring?

CHAIRMAN: Well, I agree with that. That's right.

DR WONG: Chairman, if the Commission believes that after that is done, then the Water Authority still have to do inspections -- well, this is something that we can further explore.

CHAIRMAN: You have to explore that, because under the existing law you do have the power to do that, and with power comes responsibilities; right?

DR WONG: Chairman, I would just like to bring to your

attention this perspective, and that is effectiveness of whatever approach we take. Why other jurisdictions are not doing it, there must be some reason why they are not doing it. There might be reasons that we are not aware of.

CHAIRMAN: We don't have to have regard to that. Just look at the situation in Hong Kong.

DR WONG: I would like to highlight this perspective. If you want to effective interim inspections there should be a surprise element to all these inspections. If you don't have a surprise element and you warn them, alert them that the inspections will be done, say next week, then the effectiveness of the interim inspections are subject to queries. Hong Kong's construction sites are very different from those in other jurisdictions. Hong Kong's construction sites are relatively larger in scale. It's not like overseas jurisdictions.

Now, in overseas jurisdictions construction sites, it may just take you ten minutes or so to walk through the entire construction site.

CHAIRMAN: It depends on which construction site you are talking about. Let me ask you this. For example, a village house, a small house, you don't have an AP. What will you do? They don't have an AP to help them out. They just have a plumber to do the work. So what

will happen? You are focusing on public housing, but the terms of reference 2, in our Commission's terms of reference, we are talking about the entire system, not just the PRH.

DR WONG: They don't have an AP in small houses.

CHAIRMAN: So you are just relying on the LP; right? So who is going to supervise the LP?

DR WONG: That would be the WSD, which is supervising the LP.

CHAIRMAN: Exactly.

DR WONG: I agree with that.

CHAIRMAN: If you look at terms of reference number 2, if you just focus on the HA, that would not be good enough. HA is one of the parties that we have to look at. HA has written down all the specifications and that's clear to everyone. But what about the private property developers? You can't take a look at their specifications; it's not available for you. So what will you do? Just rely entirely on them, right, or what?

The HA has laid out everything for you to look at, you know that they have a specifications library with materials that should be used, et cetera. Let's say for tomorrow you go to a small house in the New Territories, a standalone building developer, a private property

developer. So on what basis will you do your inspections? Are you just relying on WWO46, and also the two last forms to be signed by the relevant people? You don't have anything to go by, for your enforcement.

DR WONG: Let's not talk about small houses.

CHAIRMAN: Say, for example, if I want to build a house tomorrow, I want to do major renovation, I don't write down the specifications. I would like to overhaul my plumbing system. I would not ask an AP to help me out. I will just ask the LP to work on it. So how are you going to do the inspections and law enforcement? Is it the case that you would not do anything at all? You talk about AP all the time. I agree with your remarks that AP does have its own responsibility. But what about the other cases that I cited?

DR WONG: Chairman, I know where you are coming from.

I understand that. I will just highlight this one and then I will move on to another point.

CHAIRMAN: If there is no AP, then there is nobody to monitor the situation, if you don't do it.

DR WONG: (Chinese spoken).

COMMISSIONER LAI: Of course, I also understand where you are coming from.

DR WONG: Let me add two more points. One is about private properties and also small houses. How that is being

C done, I am not very clear myself so I can't say for sure
C what is happening there.

D CHAIRMAN: I think we should go by common-sense approach. D

E You say there is a system based on AP and LP and LP is E
F being supervised by AP, and I agree this is the system F
G for PRH estates. But for some projects, they are not as G
H complicated as PRH projects, and they have just the LP. H
So who is supervising the LP?

I DR WONG: I have answered that question. It's the WSD's I
I duty to supervise the LP.

J Now, moving on to LP in fact in my next point -- let J
K me set a marker here. That is about the power under the K
L WWO, what is the power and how should the power be used. L
M The administration has the discretion to exercise its M
M power. For the 11 affected estates, there has already M
been some system set up.

N When I talk about LPs in a moment, maybe we should N
O consider whether we should have a broadbrush approach O
P about enforcement or we should do enforcement according P
Q to different situations. I will come to that in Q
a minute.

R I would like to impress upon the Chairman and R
S Commissioner that yes, we have the power, and with power S
T comes responsibility, but actually the executive or T
U administration has a discretion, and the exercise of U
V

C that discretion is a matter of policy. C

D Chairman, now I would like to turn to LPs. There is D
E one point that I would really like to make to the E
F Chairman and Commissioner. In the hearing, we have met F
G three LPs. We have penalised them. We know that they G
H knew about it but still they were non-compliant. They H
I knew that leaded solder should not be used; however, I
J they did not discharge that responsibility. J

K But I would like to say we should not be too K
L broadbrush in our approach. From the hearing on LPs, we L
M had the impression that maybe they did not have a high M
N social status, that they did not have a lot of respect N
O in society. I would like to point out to the Chairman O
P and Commissioner that we have found that the three LPs P
Q were problematic, but should we just say that they did Q
R not have high social status and so we should say that R
S LPs were generally problematic? S

T CHAIRMAN: No, I never thought so. If you think we thought T
U so, you are wrong, and you don't have to address us on U
V that point. If you say they only have secondary 3 or V
O secondary 5 academic qualifications so they are not O
P professional -- we never thought so. P
Q

R DR WONG: If that is the case, we thank you, Chairman. R

S What I want to say is that the WSD is duty-bound to S
T regulate LPs, but for a regulator to regulate experts or T
U

professionals, how should the supervision be done? We have the point demerit system and also -- or PPS and also the licensing system. But we do not actually inspect the LPs' works. We have this LP system in place, and I agree with the Commission's counsel that there is room for improvement. But does it require an overhaul? Not necessarily so, because, number one, I would like to point out to the Chairman and Commissioner --

CHAIRMAN: We never thought that the LP system should be overhauled. We did not say that we would like to cancel that class of people. We didn't think so.

DR WONG: But, Chairman, I would like to say that in any professional body, there are licences that are grandfathered. Some people might have got a licence a long time ago. That goes for doctors and barristers. They might have got a licence a long time ago and there may not be a mechanism for them to be re-tested every five years so they can renew their licence. In fact, whether it's architects, doctors or barristers, they might get their licence and they may practise or not practise. This happens, and we are not only talking about LPs.

CHAIRMAN: What are you driving at? What are you driving at, on this point on LPs? Please go back to your

subject; what are you trying to tell us?

DR WONG: I am trying to point out to the chairman that on the monitoring system of LPs, when the WSD discharges its duty to monitor LPs -- before this lead in water incident, we were of the view that the monitoring was adequate. After the incident, we said that we thought we could step up control, and indeed that is what we are going to do. This is my point.

My submission is, before the incident, we thought that our monitoring of the LPs was adequate, but then we received two kinds of criticism. One, people said some LPs only had a grandfathered licence; why did you not ask them to renew their licence every year? Why is it that before the incident we did not ask them to renew their licence, by submitting themselves to a test?

Of course, those people who have read VTC courses would have had four years of training, which is quite rigorous, and people said why is it that we did not ask those people with grandfathered licences to be re-tested.

I would like to say that this is similar to other professions.

The second point is, you are concerned about their CPD and why don't you ask them to read CPD courses?

I have said in the submission that we are going to ask

them to do this. This has some room for improvement.

We agree that LPs perform a key role, in small houses and in small projects, and the level of performance and awareness of LPs does matter, and I agree.

In this incident, with regard to the three LPs, as a matter of fact, they were aware.

CHAIRMAN: What were they aware of?

DR WONG: They were aware of not using leaded solder. They knew they should not use leaded solder.

So Paul Ho said that in 2004, the VTC reminded them that they should teach this, but then they did not remind the assistants. This is because they thought that the LPs knew it. So nobody should say that the LPs did not know that they should use unleaded solder.

Chairman, I know my time is limited. Now I would like to turn to another topic, and that is water testing.

Chairman, I have three points. Number one, we have heard the political conspiracy theory from Counsel Lee. I have to tell you that I have strong objection against that theory, and I have to point out to the Chairman and Commissioner that there is absolutely no conspiracy.

If I may refer to the final submission of Counsel Lee, paragraph 14, he says -- why there is this conspiracy theory, he says because:

"(In English) First, the WHO PGV for lead is not based on a calculation of the average quality of water routinely consumed. Prior to 2011, the WHO Guideline Value for lead was calculated on the basis of the provisional tolerable weekly intake of an infant, but the PTWI was withdrawn in 2011 since the WHO/FAO Joint Committee of Food Additives and Contaminants found that it was not possible to establish a PTWI that would be considered protective of health."

Chairman, I know I am taking the risk to raise this with you, Chairman, that at the beginning of this hearing, counsel for the Commission -- well, this is mentioned in China State's final submission as well -- actually, in the opening submission of the Commission's counsel, in the first paragraph, it states the objective of this hearing and it says:

"(In English) ... excess lead [is defined as] lead content exceeding 10 micrograms which is the guideline value recommended in WHO's 'Guidelines for Drinking Water Quality' representing the concentration of lead in drinking water that normally does not result in any significant risk to health over a lifetime of consumption."

In other words, on the first day of the hearing, including myself and my team, we have known this, and to

C address this conspiracy theory, it is under
D an impression. Whether the impression is right or
E wrong, I will come to it. But then we were under
F an understanding that the so-called excess is in excess
G of 10 micrograms.

H Prof Fawell gave evidence on 5 February that after
I PGV was withdrawn, it was no longer health-based, and he
J said that we should not focus on 10 but Hong Kong should
K have a lower standard. I will address that later. But
L at the beginning of the hearing, even for the
M Commission's counsel, he referred to two main points,
N and one that the so-called excess is in excess of
O 10 micrograms.

P CHAIRMAN: Our counsel is not a water expert. You are the
Q WSD. In July/August, water experts already gave you
R advice.

S DR WONG: Yes, Chairman. I would like to say that I am
T addressing this point, but I am not saying -- I am not
U criticising it. I am just pinpointing the conspiracy
V theory.

CHAIRMAN: You don't have to quote our counsel then. You
just get on with your point.

DR WONG: But this is also an important point, because at
that time, there was the saying that the PGV represented
that it "(in English) would not result in a significant

risk to health over a lifetime of consumption".

So we were under that perception, and Chairman, you know, during the hearing, you criticised me.

CHAIRMAN: You have a big difference with our Commission's counsel. You represent the WSD. You receive instructions from your client. Your client is also advised by water experts. So you are completely different from us.

DR WONG: Chairman, as I have said, I am not criticising anybody. I am just saying, even for myself --

CHAIRMAN: Your first expert report, it was submitted but you did not call that expert to give evidence; right? Prof Ho Kin Chung, he submitted a preliminary report. It was handwritten, and it addressed the point made by our Commission's counsel, as you referred to it.

DR WONG: No, I am just trying to make a point. Our understanding was the same as the Commission's counsel's understanding at that time.

Plus, Chairman, to address this conspiracy theory, coming to Prof Bellinger's report -- this is in V1/63. I don't think I need to refer to it.

"(In English) In my opinion, the acceptance criteria specified by the Water Supplies Department for four metals, lead (10 [micrograms per litre]) ... are all based on sound reasoning."

CHAIRMAN: Sorry, I think you are out of context. I think you are quoting the evidence out of context.

DR WONG: Chairman, my focus is on the conspiracy theory.

CHAIRMAN: Okay. Then why don't you focus on it? Why do you say there is no conspiracy theory? Please do not refer to the guideline values, if that would be another topic you would address.

DR WONG: Chairman, I would like to say there is a little overlap here. What I would like to say is our understanding so far -- well, until Prof Fawell presented his report, the WSD's understanding was, and according to the evidence of Chan Kin Man was, 10 micrograms, and that is health-based.

CHAIRMAN: Yes. Please continue.

DR WONG: When Chan Kin Man gave evidence, he said that we would be taking the average, and that would not be significance to health over a lifetime consumption.

So the WSD acted according to the established procedure, and that is the sampling manual. If we should take a sample, we should take a flushed sample. I will say whether that is correct or not. But this is the recommendation of the chief scientist, according to established procedures.

Chairman, you will remember that when Dr Chan Hon Fai gave evidence on 27 August, he mentioned

an experts' meeting. A few experts discussed whether we should go for the first draw or flushed sample, and the conclusion of the experts' meeting agreed with the WSD's established procedure that we should go for flushed sampling.

CHAIRMAN: It doesn't mean that it is necessarily correct.

DR WONG: I will address whether that is correct in a moment. But what I want to say is, when the WSD made that decision, it was purely a professional judgment. You may say that this professional judgment is right or is wrong. That's up to you.

So it is not the case that the WSD thinks that this is a wrong method and which it still uses. So this is not something of a conspiracy. If you talk about this is a political conspiracy, that's not right, because this is not decided upon by, say, the chief chemist or an expert. This is sort of a recommendation by the interdepartmental committee, and it's not the case that in order to save more resources we used this wrong approach.

Chairman, I must emphasise that we disagree totally with that kind of remark.

CHAIRMAN: You disagree; you object to it, right?

DR WONG: Yes, disagree with that kind of remark.

I know that I still have 17 minutes. I will be very

quick in finishing up the two last points that I would like to say.

The next point is on the approach for water sampling. Chairman, I am again taking a risk here in saying this. I agree with China State's paragraph 5 in its submission, that there is a little bit of moving of the goalposts. The community's concern at that time was that there was excessive lead in drinking water.

CHAIRMAN: Well, you said that you are taking risk here, but then you are a senior counsel. You don't have to abide all the time by the client's instructions. You have to exercise your own professional judgment. It's not that you must toe the line of your client.

DR WONG: What I am saying is that something that I decide to say after taking professional judgment.

CHAIRMAN: No, I am talking about water sampling here.

DR WONG: Now, Chairman, first, we must know the background. We should not just look at things with the benefit of hindsight.

At that time, within the society, there was no legislation saying that the water quality should be up to standard. We have a pledge and then we use the WHO Guidelines.

After the incident was exposed, the community was saying that there was excessive lead in water, and when

they said that, they were referring to the WHO standards.

Now, the HA is a client, and as we said in our press release, we were asked to test whether we are meeting the WHO standards. Now, if at that time the instruction was to test the maximum lead level, then the approach would have been different. I agree to that. But at that time the community's concern was on WHO Guidelines, and that was where the goalposts were placed. That is, there was an exceedance of 10 ug.

CHAIRMAN: Well, the community's concern was not so much on the WHO Guidelines but rather whether the water quality was safe to use. It is you who should tell them whether the water is safe for consumption.

DR WONG: I don't have any dispute on that, Chairman.

CHAIRMAN: If you tell the members of the public whether it's 1, 5 or 10, they don't care one way or another. They just are concerned about whether the water is safe for consumption. If you talk about figures, that doesn't make a lot of sense to the members of the public. What they are most concerned with is whether the water is safe for consumption by their children. That remains the case up to today.

DR WONG: I will deal with that, Chairman. Until Prof Fawell's report was released on 5 February, Mr Chan

C Kin Man, the water expert in the WSD, and also other
D experts' concern, the main point of concern, and also
E the instruction by the HA was to test the water against
the WHO Guidelines.

F CHAIRMAN: The HA is not a water expert. The most that they
G can do is to give you some general direction, and you
H cannot say that the HA is asking you to test whether the
I water quality meets with WHO Guidelines. You cannot say
J things like that. They are just asking you to find out
whether the water for the residents is safe and then
K please do some tests. This is probably the approach
they have taken.

K Counsel are trying to play around with words and

L I am just adopting a common-sense approach here.

M DR WONG: My common-sense approach is that if you go back to
N the days before 5 February, what is considered to be
O safe water, where do you draw the line? The impression
P at that time, before 5 February -- we would be
benchmarking against the WHO standards and 10 ug per
litre.

Q CHAIRMAN: There's no problem with that. What is
R problematic is what you are going to do afterwards,
S after the benchmarking. No problem with benchmarking at
T 10 ug per litre. What we should focus on is the purpose
of doing the tests and the checking.

DR WONG: I will come to the purpose now, Chairman.

The first point I would make is that at that time, the WSD's water experts, they are using the benchmark of 10, and then they used flushed, the flushing sampling protocol, and tried to ascertain the quality of water. They are not doing it for the purpose of identifying the maximum level. What do you think is important?

CHAIRMAN: The crux of the question is what is the purpose of your tests. If we go by your protocol -- well, maybe we are repeating ourselves here -- we don't have to go into the households of the tenants to get the water samples. We can go to the rooftop tanks and the sump tank underground and then that might suffice.

DR WONG: Let me try to clarify, Chairman. You might have the misimpression, misunderstanding, that the flushing water for two to five minutes, and then we get a water sample. No, that's not the case.

CHAIRMAN: Let's take a look at your own sampling protocol. Please repeat what you said.

DR WONG: If you takesamples after two minutes or five minutes, you won't be able to test the water quality at the connection points.

CHAIRMAN: I fully understand what you are saying, because every block differs in its own circumstances. For some units, you can do it just for two minutes, and then for

some of the units, five minutes are required.

But if you look at your own sampling protocol, in your sampling manual, two to five minutes or even longer are recommended. What's the purpose of that? So it's to free the service pipe with stagnant water? That's clearly stipulated there; is that right?

DR WONG: Yes.

CHAIRMAN: Also ISO 5667, I can't exactly recall the number, it states clearly it should be done at constant temperature. Why? Because Prof Fawell said constant temperature is the temperature at the water in the street pipes, standpipes, because once water gets into the household, it may be exposed to sunlight or it may be shaded, so that might not work.

So, going by your own water sampling protocols or ISO 5667 -- we are talking about testing water in the water mains.

DR WONG: I must clarify, in the Inquiry, with Prof Lee, for the 11 affected estates, we should not be testing for the maximum level.

CHAIRMAN: Don't quote Prof Lee, because Prof Lee has his own objectives in his water sampling. He was not determining whether the estates were affected or not.

DR WONG: Chairman, let me put it simply. Depending on the flow rate -- well, two minutes for an occupied flat,

five minutes for an unoccupied flat. The problem may appear at horizontal pipes, sump pipes, or the pipes at the rooftop tanks. So it's not the case that we already know the problem and then we do the water sampling. If that is the case, we wouldn't have to do the water sampling. I think we must clarify that, depending on the flow rate, we will take water sampling after it's been flushed for two to three minutes, and we are talking about the inside service system.

If we want to take the water samples for the water at the connection point, then that's very simple. We can just go to the water connection points.

CHAIRMAN: That's how your water sampling protocol is designed. I read through your sampling protocol and sampling procedures, and that's what I find out.

DR WONG: Chairman, I want to say --

CHAIRMAN: I understand what you are talking about.

Conspiracy theory, I think you are done with your explanation on that; right?

DR WONG: Second, after hearing comments from Prof Fawell going forward, should Hong Kong adopt a lower standard in our checking of water quality? Should there be an action level to be set up in Hong Kong?

If we just go by the concept of compliance, then it doesn't work. Looking forward, should we have an action

C level in Hong Kong, and if that is the case, what
D protocol should we be using? Should we be using the
E first and second draws, or are we using Prof Lee's
F proposed protocol?

CHAIRMAN: We will not be recommending on those protocols.

F Rest assured that we will not do that.

G DR WONG: I would like to point out to the chairman and
H member that, looking forward, what matters is not the
I figure but whether water is safe, and we think that the
J compliance level at 10 is not something that Hong Kong
K should adopt. Looking forward, how should the action
L and intervention level be drawn? As what Dr Chan
M Hon Fai said, this is not something that the Commission
N should decide on.

CHAIRMAN: Rest assured we will not give you a figure. This
M is not something that we will just decide on.

N Prof Fawell said 5 micrograms is easily achievable.

O DR WONG: Chairman and Commissioner, in our closing
P submission, we said that we would set up
Q an international expert committee to look into the
R issue, including whether Hong Kong should legislate on
S this.

R Now, if Hong Kong should legislate to mandate
S a certain action level for water coming out from the
T taps, that will have resource implications and that will
U

A *Annex: Realtime English Transcription based on floor / Simultaneous Interpretation* A

B Commission of Inquiry into Excess Lead Found in Drinking Water Day 65 B

C also involve a social cost because the residents and the C
D property owners will have to pay costs as well. And D
E this should be discussed by the stakeholders. We are E
F more than happy to lead the discussion. This is F
G something that we will embark on, but the focus here is G
H this. Since there are so many controversies and people H
I are not happy with their flushed samples, and if we go I
J by the first draw, as Prof Lee pointed out, we might not J
K be able to determine the maximum level by using the K
L first draw even. For Australia, Canada and New Zealand, L
M they used first draw. In Japan, they flush it for five M
N minutes. N
O CHAIRMAN: Please repeat. O
P DR WONG: If we want to do water sampling, different P
Q jurisdictions adopt different practices. Q
R CHAIRMAN: No, I don't think that's the case. Yes, well, R
S that may be the case. But then no jurisdiction seems to S
T be using flushed samples. If there are countries using T
U flushed samples, at the same time they will be also U
V working on unflushed samples as well. V

DR WONG: Looking at the 4th statement of Chan Kin Man,
there was information on a survey on other
jurisdictions.

CHAIRMAN: HKIE also did some.

DR WONG: I understand, for Canada, flushed samples; in

New Zealand, flushed samples as well.

So, Chairman --

CHAIRMAN: Well, is it the case that when other jurisdictions are not doing things so well, we should follow them and we should not mind about doing what they do?

DR WONG: No, that's not the case. If there are borderline cases, 5 to 9, what we would do is that we would set an action level for water coming out from the taps and also the water sampling approach. Say, for example, 15 for the US.

COMMISSIONER LAI: Okay. Are you trying to say that we should not fix a recommendation, that you should have some flexibility; is that right?

DR WONG: Yes.

COMMISSIONER LAI: We are not going to fix the level for you. Be assured. Is that what you are trying to drive at? Is that all from you?

DR WONG: I still have two more minutes, Chairman.

CHAIRMAN: Yes, you have two more minutes. Please continue.

DR WONG: I would like to turn to another important topic. During the hearing and also in witness statements, people mentioned discarded samples.

I would like to make two points. The discarded samples relate to certain estates, and counsel asked the

director of WSD, and Shui Chuen O Estate was mentioned.
Unfortunately, nobody asked Chan Kin Man what happened
to other discarded samples.

Yesterday, the HA helpfully have put in their press
release. Chairman, that is in C21, 19128.

CHAIRMAN: Was that submitted only yesterday?

DR WONG: No, that was a press release by the HA.

CHAIRMAN: Why is it that it would still be submitting
evidence yesterday? Who did it?

DR WONG: The HA.

CHAIRMAN: The HA is shaking his head.

MR YIN: Sorry, it was by the Commission's counsel.

MR SHIEH: It has been submitted before. It was after the
public release of the expert's reports. The media asked
questions and were concerned about the contents of
Prof Lee's statement, and so the HA released a press
release to answer that.

MR YIN: Chairman, that was released on 5 February.

CHAIRMAN: Okay. Continue.

DR WONG: If I could refer to that press release, the last
paragraph:

"(In English) Regarding the number of samples or
samples that have not yet been made public, when HD and
WSD conducted systematic water sampling tests for PRH
estates in the past, individual water sampling results

were not adopted for various reasons. For example, HD and WSD had found cases where water samples 'with excess lead' were suspected of contamination during the sampling process, which led to deviation in the test results. Under these circumstances, more water samples had to be taken before the water quality of the estates concerned could be determined. If, after analysis, it was concluded that the water samples 'with excess lead' had been affected by environmental factors, the samples would be discarded."

Therefore, with regard to the discarded samples, they were not just discarded, but more samples were taken before a decision was made to discard certain samples.

CHAIRMAN: No, people are saying you should not have discarded the samples; they should have been kept. As long as you can explain what you did with them.

DR WONG: Chairman, the last point here --

CHAIRMAN: This takes you back to the conspiracy theory; is that right?

DR WONG: Actually, Prof Joseph Lee said that there were different interpretations, and then he himself did some investigation. He went back to seven estates, and still the building concentration did not exceed the limits. Therefore, there is no conspiracy involved in this

point.

Chairman, I know I have exceeded my time by two minutes. But I have two more points. Can I please have two more minutes?

CHAIRMAN: Okay.

DR WONG: Chairman, in Shui On's submission, it mentions the copper alloys. May I refer to the Shui On submission?

CHAIRMAN: I have read it.

DR WONG: Paragraphs 10 and 11. It says that with regard to solder joint pipes, there is more with regard to copper alloy joints. Actually, there are many joints in a pipe. The comparison here is not correct. The main cause should still be the solder joints, not the copper alloys. I think the analysis there is not totally correct.

CHAIRMAN: Yes, that is because there would be more at the elbow.

DR WONG: If they use the ratio of 1:1, that is not very meaningful.

Lastly, Chairman, I would like to talk about the definition of "affected estate" and "unaffected estate". How do you classify an estate as "affected" or "unaffected". From the angle of the WSD, I would like to clarify, and this is the main point, after doing water samples, how do we classify whether buildings are

affected or unaffected?

CHAIRMAN: That is not a matter for you.

DR WONG: Yes, correct.

Before I sit down, Chairman, I would like to say that because of limited time, I was not able to address all the points. For example, whether everything was promulgated by us, we only had internal documents. Please, Chairman, read our final submission. We have tried to be comprehensive. The points that I have not made orally are in the submission.

CHAIRMAN: Okay. If you have put everything in the submission, that's all right.

DR WONG: And also, last but not least, Chairman, in other oral submissions that may criticise the WSD, I will not be able to respond. I can only rely on our final submission.

CHAIRMAN: Yes. You mean whatever you have already submitted? Yes, of course, or else there would be no end to submissions.

But before you sit down, I have something to ask you. Section 15.

DR WONG: Yes, Chairman.

CHAIRMAN: Paragraph 148. I am not talking about the interpretation of the law, but I think this is a COI hearing. It is a judicial hearing. Such submissions

should not have been submitted at all, meaning that you are telling me that:

"(in English)... [it] would be a clear error of law.

Any decision based on such an interpretation would itself be unlawful and liable to be set aside."

So you are telling the judge that, "You should not make such a decision; if you make such a decision, I will appeal against it"?

DR WONG: Chairman --

CHAIRMAN: Dare you write this to the Court of Appeal, that this is a clear error of law?

DR WONG: Chairman, I apologise.

COMMISSIONER LAI: I am not a judge, but I also feel that you have used very strong wording here.

DR WONG: I accept. I accept.

CHAIRMAN: We will take a break for 20 minutes.

(11.38 am)

(A short adjournment)

(11.57 am)

CHAIRMAN: Mr Yeung?

Submissions by MR YEUNG

MR YEUNG: Ho Biu Kee, on 4 February and 10 March, we submitted our written submissions. We have put in detail the concerns highlighted by Ho Biu Kee in the Inquiry. I won't repeat the details here. I would like

C to make several points on behalf of Ho Biu Kee. C

D First of all, with leaded solder materials, D
E Ho Biu Kee lacked awareness of such materials and they E
F didn't know -- as in Kai Ching and Kwai Luen Estates, F
G leaded soldering materials were used, and they didn't G
H know that such materials would lead to excessive lead in H
I water. I

J Mr Ho Man Piu has apologised during this hearing to J
K the public. K

L Now, why such leaded soldering materials were L
M procured? Ho Biu Kee's staff members have explained M
N that as well, all along, they have been using lead-free N
O soldering materials. But then in terms of O
P communication, there has been a problem identified. The P
Q contract specifies that there should be lead-free solder Q
R materials, but Mr Kwong has submitted materials for HA's R
S approval and the materials have been duly approved. S

T But then this message has not been properly T
U communicated to the procurement department of the U
V company and also site staff. So Mr Kwong all along V
W thought that it would be purchased from Prosperity, and W
X Prosperity has also provided samples of lead-free X
Y soldering materials, and his understanding is that this Y
Z would be the practice all along, and they have Z
ultimately found that this was not the case.

C So the procurement staff lacked awareness of such C
D leaded soldering materials. Site staff relied on their D
E previous experience to decide what materials to E
F purchase. For Kai Ching Estate, Mr Chan Siu Wah knew F
G about the solder strips, and of course it contained G
H lead. That is why, in Kai Ching Estate, such leaded H
I solder was used in many places. I

H Mr Wong Kwai Hung was responsible for Kwai Luen H
I Estate. He followed the practice of Kai Ching Estate. I
J Therefore, leaded solder was used in Kwai Luen as well. J
K That is why we have this incident. K

L Unfortunately, Prosperity Building Materials Co Ltd L
M knew that the solder strips contained lead, and judging M
N from the quantity, Prosperity should know that it was N
O probable that the solder strips would be used to join O
P water pipes, but it did not alert Ho Biu Kee about the P
Q fact that this contained lead and no catalogues were Q
R supplied to Ho Biu Kee either. R

S The LP, Mr Lam Tak Sum, should know that leaded S
T solder should not be used; he should know about that T
U requirement. But then, in the monitoring process, U
V because of his negligence -- well, he actually did not V
do supervision and he did not remind Ho Biu Kee of such
a requirement. That is why, in these two estates, we
had the incident.

C Ho Biu Kee would like to emphasise a point. It was
D not for the purpose of saving money that they used
E leaded solder. Mr Ho Man Piu raised two points. I hope
F they would be considered by the Commission.

G First, soldering materials constituted only a small
H part of the building works. Even if the figure of
I 320,000 was considered -- well, considering the total
J amount of 57 million for Kai Ching, that is a small
K amount. This is the first point.

L Secondly, different workers did mention that using
M leaded solder would amount to more wastage. Because of
N the temperature required, a lot of the solder would be
O wasted. Also, for the workers, some of them would
P choose to throw away the solder strips that were unused,
Q and after the incident Ho Biu Kee did some cost
R comparison. For Shui Chuen O Estate, only unleaded
S solder wires were used, and compared to Kwai Luen and
T Kai Ching, actually the cost for Shui Chuen O Estate was
U lower. Therefore, cost was not within the consideration
V of Ho Biu Kee.

I would ask the Commission to accept the submission
of Ho Biu Kee that this is not a matter of cutting
corners. This is not to cheat either. But it's just
that the procurement staff and workers and site staff
did not know the requirement of using lead-free solder.

Ho Biu Kee said after the event that they would step up training of personnel and management, hoping to prevent a recurrence of the incident.

These are the viewpoints Ho Biu Kee would like me to address the Commission on.

CHAIRMAN: If I ask you that actually your site manager knew about the requirement of using lead-free solder, what would you say?

MR YEUNG: My submission is Mr Chan Siu Wah who was responsible for Kai Ching, he said that he did not know that the solder strips contained lead. He had been using it, and according to the WWO, he did not know that there was the requirement that there should be lead-free solder used. And Mr Wong Kwai Hung was responsible for Kwai Luen. He said clearly that he was not aware of this, that according to the WWO, only unleaded solder should be used, and he did not know there was this contractual requirement either.

In his understanding, a higher temperature has to be used for solder wires, for soldering valves, and workers like to use solder wires more. The two persons in charge did not know about the requirement, and they did not know that the solder strips bought were containing lead.

This is the submission from Ho Biu Kee, that the two

persons in charge did not know about the requirement.

This is for the consideration of the Commission.

CHAIRMAN: What if I say they knew? What would be the impact on Ho Biu Kee? Would you like to address that point? Would you like to address the position of Ho Biu Kee if I say the two persons knew about the requirement?

MR YEUNG: The Commission would know that Ho Biu Kee's management was not very strict. Mr Ho Man Piu relied on his staff to do the procurement, and Ho Biu Kee emphasised one point: he admitted that he committed a mistake.

But with regard to all HA requirements, he told his staff to adhere to those, especially the specifications of materials. And this time around, if his staff knew about the requirement, then the Ho Biu Kee management, if we ask whether it allowed this or permitted this, the answer is no; it is just a problem in the management or in the procurement process.

CHAIRMAN: Okay. Is that all from you?

MR YEUNG: Yes, that's all from me, Chairman.

CHAIRMAN: Please be seated.

Nobody else will speak in the morning? Shall we break for lunch? We will resume at 2.30, and we will have Golden Day and Cheung Tat Yam. There will be

a counsel doing oral submission. They have sent in no written submission. Basically, they will rely on their interim submission.

Then, in the afternoon, we also have Shui On.

I would like to mention that on Thursday, because Mr McCoy is otherwise engaged, Paul Y will only make its submission on Thursday. Because of time constraint, we will start at 9.30 on Thursday.

MR G CHAN: (In English) Mr Chairman, for Shui On, perhaps

I would like to put down a marker here. I have been expressly instructed not to make any submissions on behalf of Shui On. So unless there are any questions you would like me to assist the Commission with, my submissions will be at most ten seconds.

CHAIRMAN: So you are only going to rely on your written submission; is that right?

MR G CHAN: (In English) That's correct.

CHAIRMAN: So in the afternoon we only have Golden Day and Mr Cheung Tat Yam.

We will resume at 2.30.

(12 .09 pm)

(The luncheon adjournment)

(2.31 pm)

CHAIRMAN: Yes.

C Submissions by MR WU C

D MR WU: (In English) Mr Chairman and Commissioner, I wonder
if I would be allowed to make my submissions in English? D

E Because that's how I have prepared my notes. E

F CHAIRMAN: (In English) Yes. F

G MR WU: (In English) These are submissions made on behalf of
Golden Day Engineering Co Ltd. G

H The position of Golden Day, based on the evidence of
Cheung Tat Yam, the owner of the company, and the H
I evidence of Golden Day's other employees, has been set I
J out in Golden Day's interim submission dated 5 February J
2016.

K The key points of Golden Day's submissions in K
L summary are as follows. There are just three points. L
M The first point is that there does not appear to be any M
N controversy that Golden Day as an organisation, though N
O not necessarily all of its employees, was aware of the O
plumbing installation works at Wing Cheong Estate,
P Tung Wui Estate and Hung Hom Estate Phase 2. P

Q Point number 2 -- Q

R CHAIRMAN: (In English) Can you repeat your point number 1,
please. R

S MR WU: (In English) Sorry, point number 1 is that there S
T does not appear any controversy that Golden Day as T
U U
V

an organisation was aware of the Housing Authority's requirement to use lead-free solder for the plumbing installation at Wing Cheong, Tung Wui and Hung Hom Phase 2. So there was awareness of the requirement to use lead-free solder.

The second point is that it is also unequivocal in the evidence that all of the employees of Golden Day, that they were not aware of the existence of leaded soldering materials in the market in Hong Kong.

This evidence is corroborated by the evidence of Mr Leung Wai Keung, technical director of Paul Y, who said that in his over 30 years of experience, he thought there was only one solder material, and the evidence of Prof Fawell, expert witness appointed by the Commission of Inquiry, to observe that half of the time, people don't even know the difference between different solders. That's 16 February -- I am referring to the transcript -- page 188, lines P to T.

There is a further plethora of other corroborating evidence which the Commission of Inquiry has heard, some of which can be identified in the written closing submissions of the COI, such as the evidence of Ching Chi Fai of Yau Lee, that's at page 36 of the COI's submission; evidence of Chan Siu Wing of China State, that's also at page 36 of the COI submission.

CHAIRMAN: (Via interpreter) Sorry, all that is not in your interim submission, or is it?

MR WU: (In English) Not all of it, because --

CHAIRMAN: (Via interpreter) Then why did you not submit a final submission?

MR WU: (In English) Well, at the time -- the thing is, we have not -- a lot of this is responsive to some of the points that have been raised in the final submissions that are filed by other parties.

CHAIRMAN: (Via interpreter) Then that's not fair, because you have read all other final submissions, and now you respond to those, but then you have not submitted any final submission yourself, and then other people would not be able to respond to yours; only you can respond to other people's final submissions. Is that right?

MR WU: (In English) Well, I am not sure what to say to that, Mr Chairman. You know --

CHAIRMAN: (Via interpreter) We have said before how the procedure would be. If you tell me, "It will only go by my interim submission", then I will not say anything to that.

MR WU: (In English) In fact, a lot of what I am about to say --

CHAIRMAN: (Via interpreter) But then -- well, I have not heard point 3 -- I think they will all be new.

MR WU: (In English) It's not new, Mr Chairman, but it's just that I am referring to other --

CHAIRMAN: (Via interpreter) No. If you write down 1, 2, 3, I will have to write down 1, 2 and 3. Why did you not write them down for me?

MR WU: (In English) I can assure you, sir, that this is actually something that has already been referred to in the interim submission.

CHAIRMAN: (Via interpreter) Well, their submissions also refer to what other people say. All other people also refer to what this witness said, what that witness said, and then does it mean nobody should submit final submissions to us; right?

Other people do not know what you are going to say, but here you are responding to other people's final submission. Do you think that is correct? Do you think that is the right thing to do?

I will give you one day. You do it today and then you submit it within today and I will hear you tomorrow morning.

MR WU: (In English) Okay. Thank you, sir.

CHAIRMAN: (Via interpreter) Right? Is that right? We will listen to you tomorrow afternoon.

MR WU: (In English) Yes. Thank you. I will do that, Mr Chairman. Thank you.

CHAIRMAN: (Via interpreter) At 3.15.

We are wasting time. You are wasting all people's time. You knew our rules. We did not say so only yesterday or today but we set out the rules in the week before last.

Okay. Do you have anything to say about your interim submission? Do it now.

MR WU: (In English) The only submissions I have, it's really three points, Mr Chairman. The first point I have already told you. It's to do with --

CHAIRMAN: (Via interpreter) Then you don't have to say it. Okay. You just follow the interim submission, will you? "Yes" or "no"? Then you won't waste other people's time.

MR WU: (In English) In fact, I was actually going to -- what I have done is I have prepared my notes for this afternoon, and I can quite happily just give you the notes and it can replace my oral submissions, if you prefer to have it done that way, Mr Chairman.

CHAIRMAN: (Via interpreter) You know why? I have read your interim submission. Basically, it's reciting evidence. In the most part, you said, "This one did not know, that one did not know", that's it. There is very little material in what you are trying to say; am I right?

MR WU: (In English) Yes, that is correct.

CHAIRMAN: (Via interpreter) You only have like two pages in your interim submission.

MR WU: That is correct, Mr Chairman.

CHAIRMAN: (Via interpreter) Why don't we do this: since you wrote it in Chinese, why don't you also say in Chinese now which are the three points? Don't waste our time. Now speak. Use Chinese, not English, because your submission was in Chinese. You filed so much material and none of that was in English.

MR WU: (Via interpreter) Okay.

Actually, I would refer to three main points.

Number 1, paragraph 2, Mr Cheung Tat Yam --

CHAIRMAN: What do you mean by point 2? Are you talking about paragraph 2?

MR WU: Yes, paragraph 2. Mr Cheung Tat Yam, Mr Yung Kwok Choi, Mr Hui Wang San and Mr Wong Kam Man indicated that before the lead in water incident, they knew that they had to use lead-free solder for jointing pipes.

CHAIRMAN: Okay, so they knew. But just now you said that they were not aware of unleaded solder in the market.

MR WU: No, I said "(In English) was aware".

CHAIRMAN: Okay.

MR WU: "(In English) Was aware of the Housing Authority's requirement".

CHAIRMAN: All right. Fine. That's point 1.

MR WU: And the second point, paragraph 3, the witness of Golden Day indicated that before the lead in water incident, they were not aware that there was lead in the solder material sold in the market and they did not pay attention whether the solder they bought contained lead. This is point 2.

Then point 3, that's in paragraph 4 of my interim submission, Mr Cheung Tat Yam indicated that before the lead in water incident, he did not know that there was a difference between solder wires and solder strips. Mr Yung Kwok Choi, Mr Hui Wang San and Chau See Ming also indicated that before the lead in water incident, they did not know there was a difference in the composition of solder wire and solder strip. They only knew that both were used to joint copper pipes and fittings. Ms Lam Lai King, Ms Mok Wai Yin and Mr Wong Kam Man indicated that according to what they knew, solder wires and solder strips were the same thing. Mr Yung Kwok Choi, Ms Lam Lai King and Ms Mok Wai Yin pointed out that they were not aware that the price for solder strips and solder wires were different. Mr Cheung Tat Yam said that in calculating the bidding price for projects, he did not consider or he did not calculate or factor in the price of the solder material, because it was of a very small amount and it only

C contributed to a very meagre amount or percentage of the C
entire project's price. And it was mentioned that it
D would only amount to 0.3 per cent of the project cost. D

E Mr Chairman, if you remember, when Mr Cheung Tat Yam E
gave evidence, you did some calculations with him, and
F a figure of \$80,000 was mentioned, and a project could F
G cost over \$10 million. That is why Mr Cheung Tat Yam G
H said that the project cost could amount to over H
I \$10 million, and if you do the calculation it would be I
J about 0.5 per cent; that is a very meagre amount of the J
project cost.

K Mr Hui Wang San and Mr Chau See Ming also said that K
L the use of solder strips or solder wires would make no L
M difference. They both said that the time needed and the M
N work processes would not be different either. They both N
O said that the wastage for using solder strip would be O
P more, because the section of the solder strip that you P
Q hold in your hands cannot be used. Q

R According to Mr Chau See Ming, if the solder strip R
S was too hot, it would drip very quickly and solder S
T wastage would be high. T

U That is my third point. That is, during the work U
V process, there is no economic incentive or work V
S facilitation reason for Golden Day to deliberately use S
T substandard soldering material. T

So, in conclusion, that was set out in paragraph 14, the last page of my interim submission, and that is, in summary, given the testimony of Golden Day's witnesses, before the incident, Golden Day should be aware that lead-free soldering materials should be used in plumbing works, but it did not know leaded soldering materials were being sold on the market. It did not know that the soldering materials it procured contained lead, and did not know the difference in prices between leaded and lead-free soldering materials, and did not include the costs for soldering materials in its tender. Therefore, there was no incentive for Golden Day to use leaded soldering materials. Therefore, Golden Day did not intentionally use or have any reason to doubt that leaded soldering materials would be used in the plumbing works of Hung Hom Estate Phase 2, Tung Wui Estate and Wing Cheong Estate.

So that's all I want to say on the interim submission.

CHAIRMAN: Do you have anything to say as far as final submissions are concerned?

MR WU: If you allow me to submit my final submission before 3 pm tomorrow, I will be discussing witness statements of other parties.

CHAIRMAN: What kind of statements are you talking about?

MR WU: The statements given by other witnesses.

CHAIRMAN: So why do I have to give you extra time to do that, if this is what you want to do?

MR WU: There have been accusations made, so we wanted to make clarifications on this.

CHAIRMAN: Main contractors, subcontractors are following our pattern to do their submissions, so why your case should be so special that you have to read through all what others have said and listen to what they say before you do the submission? To my understanding, you have written in to us earlier, telling us that you would rely on this interim submission as your final submission and you don't have anything else to say; is that right?

MR WU: Well, we would say that we would not have a written final submission.

CHAIRMAN: Why? Why not? Let me try to retrieve the letter you sent us.

I recall that I made myself very clear, and after you have given us all your submissions, then we would put the submissions on our website at one go, so that you would not be sort of copying from others.

MR WU: I didn't copy anything from others.

CHAIRMAN: Of course, you would not admit to that. None of you would do that. No one would say, "I will write what I will after reading through what others have to say."

MR WU: There have been allegations of fraud, and because they have been written down, I don't think we should have the opportunity to respond to these allegations or accusations.

CHAIRMAN: You should have known much earlier. You didn't anticipate that at all?

MR WU: In our interim submission, we have already addressed those concerns, and the interim submission has also addressed briefly these allegations.

CHAIRMAN: You said that after you have read through what Paul Y has written, then there is a need for you to respond. Is that what you are saying?

MR WU: With regard to Paul Y's submissions --

CHAIRMAN: All along, you have been aware of Paul Y's stance; is that right?

MR WU: In our interim submission, we have already dealt with this.

CHAIRMAN: So then why don't you just use your interim submission?

Now, it seems that because Paul Y has written something, then you have to make refutations.

MR WU: A moment please.

CHAIRMAN: This is what you have written:

"We write to inform the Commission that Golden Day has nothing to add to the interim submissions submitted

on 5 February 2016 and will not be submitting any
further written submissions."

MR WU: I thought that our oral submission's purpose is to
deal with matters raised in other people's final
submissions and this would be a last opportunity for us
to deal with those matters. This is what I thought.

But if that was not the purpose of the final submission,
then I apologise for that.

CHAIRMAN: Please, finish what you have to say then. I will
allow you time to finish what you have to say. You
don't have to write anything further.

MR WU: Yes. Complete what I meant to say; right?

CHAIRMAN: Yes.

MR WU: Thank you, Mr Chairman, for giving me that chance.

I am just going to read out the materials that
I have prepared. It's not going to be very lengthy.

(In English) It's only -- I have six and a half
pages, with double spacing. Okay, so where I was,
I was --

CHAIRMAN: A minute. Let's make a copy for everyone.

Let's take a break for five minutes.

(2.53 pm)

(A short adjournment)

(3.05 pm).

CHAIRMAN: Please continue.

MR WU: (In English) Mr Chairman, in relation to basically the first page and a half of my written notes, I am just primarily referring to some of the transcript, so that I have some transcript references here, but I am conscious that if you don't want me to repeat all of this, I can skip all of this, and then people can read this themselves.

So, in relation to the three points I made, I have already made them, so there are transcript references in my written notes.

Then on the second page -- I don't particularly want to deal with the second half of my second page, because I am conscious of the fact that you don't want me to repeat what's written in other people's written submissions, because what we are saying here basically is we -- you know, we basically agree with China State's submission that there has been an overwhelming lack of awareness of the risk in relation to lead contaminated water or lead inclusion in soldering materials.

So onto the third page, perhaps I would -- this is the point that I really ought to be making, that taking into account the submissions that have been made and the evidence that the COI has heard, we believe that it would be hugely unfair to place all the blame or most of the blame on the plumbing subcontractor or the licensed

plumber, regarding the use of non-compliant soldering materials, just because they happen to be at the end of the contractual chain and thus an easy target.

This is particularly the case, talking about the lack of awareness of lead contaminated or lead inclusion in solder materials, this is particularly the case with Mr Cheung, who became a licensed plumber in the 1970s, through an apprentice process, without the need for any formal training, so his level of awareness of solder-associated risks would not be the same as those who hold a diploma from a vocational training school today. This is a point that other people have raised as well in other contexts and I have provided the transcript reference here.

So now I turn to some of the points that I believe have been made wrongly or unfairly against Golden Day by Paul Y or China State, and primarily Paul Y.

First, there is a suggestion that Golden Day never had any intention to use the approved sample of non-lead solder in Tung Wui and Wing Cheong. This is a suggestion that arises from an answer given by Mr Yung on 6 January 2016, page 137, line U of the transcript. We say that the answer was taken either erroneously or entirely out of context, because I would like to refer the Commission of Inquiry to several answers and

C questions between Mr McCoy and Mr Yung that precede and
follow that answer that I just referred to. C

D On 6 January 2016, page 137, lines J to M of the
transcript, there was a question raised by Mr McCoy: D

E "Between June 2010 and August 2011, only 50 per cent
F leaded solder was used by Golden Day at Tung Wui
G Estate?" E

H The answer that was given by Mr Yung was: H

I "I cannot answer this one. This is because I only
J know about this recently, I have not seen the purchase
K orders issued by the company, and I have not paid
L attention to the materials delivered to site. I have
M only just seen these invoices and realised." I

N Then there's another question that follows that, at
page 137, lines P to R of the transcript. Question: N

O "Again, it demonstrates that Golden Day only
P purchased lead solder? O

Q Answer: I see this, now." Q

R I think I would like to emphasise the word "now",
because this is his present recognition at the time when
S the question was raised. R

T Then there was another question after the one that
he gave which gave rise to the allegation against
U Golden Day by Paul Y. It is at page 138, lines I to K.
V The question was: T

"This was your plan [referring to the plan to profit from the use of leaded solder] from the very start, in both of these projects?", suggested Mr McCoy, and the answer that was given was that:

"I do not agree because I do not know how the wrong order was placed, but the tin strip or tin wire, there shouldn't be a big difference in price, as far as I know."

So the point is the above answers are wholly inconsistent with Golden Day not having any intention from Day 1 to use the approved soldering materials. There is a total lack of knowledge by Mr Yung as to what Golden Day was going to order, let alone any intention to order any non-compliant materials.

So the only explanation we have for that answer is that there was a mismatch between the question asked by Mr McCoy and the simultaneous translation, which unfortunately there is no recording of, so Mr Yung was probably not answering exactly the question which was asked of him.

In any event, Mr Yung was in no position to answer the question for Golden Day, because he could not even answer a question as to how the wrong solder got to be ordered by the company and he had no idea as to the price difference. This is at page 138, lines I to L, of

the transcript of that day. He was simply not responsible for and had no control over the procurement of solders or any other materials. Those who were involved in and/or responsible for the procurement of soldering materials, namely, Mr Hui, Mr Chow, Ms Mok and Ms Lam, did not know that solder samples had been submitted for approval and there is no basis to suggest that they had no intention to use the approved soldering materials from day one.

So, in the circumstances, the answer given by Mr Yung on 6 January at page 137, line U of the transcript, cannot be relied upon.

Coming to the \$80,000 profit, the so-called \$80,000 profit, it has been suggested that this was a finding or a conclusion of the chairman of the Commission of Inquiry. We say that this can hardly be the case. The calculation by the chairman is at the 6 January transcript, page 108, lines H to P -- page 108, line H, to page 109, line K. The chairman was primarily undertaking a rough estimate to gauge the order of magnitude of any possible saving which might result from the use of leaded solder. The COI had no evidence before it as to what the price of lead-free solder was at the time when Wing Cheong Estate was being constructed. The estimate has not taken into account

the higher wastage for the use of solder sticks as already mentioned. So the \$80,000 cannot be characterised as a finding.

In any event, in relation to the \$80,000 savings, if there is such a saving at all, in the context of a \$10-plus million project, it equates to only about 0.5 per cent of the contract sum, taking a middle value of \$15 million as being the price of the contract. According to Mr Cheung, a more precise figure ought to be about 0.3 per cent, and that is on 5 January, page 91, lines P to S of his evidence. While this may be of some significance in comparison with the monthly salary of Mr Yung and Ms Lam, which the chairman has referred to, it would not be safe to suppose that Mr Cheung would put his reputation and his longstanding business in jeopardy for savings of relatively small sums.

I have already mentioned that it was small enough that Mr Cheung considered that it is not necessary to include it in his tender price.

Then there was a suggestion that Mr Cheung did not know what he was signing, when he signed the WWO46 forms, and this was something that was raised by Paul Y to basically discredit Mr Cheung, and it was said that it cannot be true that after he has been signing these

forms for so many years, he didn't know what he was signing.

Mr Cheung is an elderly person who had by then been subject to cross-examination for almost a day, and he was visibly tired and confused. His answer should be considered in the context of his unequivocal acceptance that he understood the need to supply non-leaded solder for the various Housing Authority projects.

Lastly and most importantly in relation to Paul Y's allegation, and it's in relation to Paul Y relying on Mr Cheung's failure to procure the supply of compliant soldering materials, in circumstances where he had signed the subcontract for Tung Wui and allegedly understood the WWO46 forms which he signed amounted to a case of deceit.

Now, what we would say is that this Commission of Inquiry's terms of reference does not include any determination of civil or criminal liability of any party, and Mr Cheung therefore reserves his position in respect of any allegations of deceit or fraud which has been made against him, which we say are quite unnecessary. It should be sufficient for Mr Cheung to say, for the time being, that the allegations are strongly denied and he did not have the requisite knowledge at the time that lead soldering materials

were available in the market and would be supplied to Tung Wui before the excess lead in water incident came to light in July 2015.

There is a separate allegation of fraud and deceit against Mr Yung, which Paul Y says gives rise to a suspicion that Mr Cheung has been conspiring with Mr Yung in respect of the fraud and deceit.

I have already addressed the Commission of Inquiry that the answer that was given by Mr Yung on 6 January at page 137, line U of the transcript, which underpins Paul Y's allegation, does not make sense and cannot be relied upon. So it follows that any allegation of conspiracy to defraud is denied by Mr Cheung.

As to China State, it is incorrect for it to say that Golden Day had no system or regime in place to ensure that its procurement and site supervision staff were in the know about what materials had been approved and to be ordered. It is the evidence of Ms Mok, on 12 January 2016, page 21, lines M to O of the transcript, that in receiving orders for materials from the site supervisors, she would place orders in accordance with the materials tables attached to the WWO46 forms. A similar answer was given by Ms Lam, on 7 January 2016, at page 16, lines P to S of the transcript.

The point here is that the ordering -- there is no complete disconnect between the people who prepared the sample submissions and the people who did the ordering, because people at the purchasing department were aware of the Housing Authority's requirement, which are the same as what has been set out in the WWO46 form for the WSD, but it just so happened that the approved solder, soldering material, by the Housing Authority did not appear in the WWO46 form and therefore the wrong soldering material was being ordered.

So, separately, the way in which China State seeks to discredit the evidence of Mr Hui, at paragraph 105 of their written closing submissions, is not warranted. According to Mr Hui's answer, at 11 January 2016, page 11, lines S to T -- just a little bit of background in relation to this is that Mr Hui was being challenged in relation to how he knew about the WL50D, (Chinese spoken), being problematic before this particular type of soldering material was -- the name of this material came out from the press and then from the COI proceedings.

On 11 January 2016, at page 11, lines S to T, Mr Hui basically explained that he was using the wrong reference; he really should have said "solder stick", and the name "WL50D" was something that he picked up

later, in the course of the preparation of his witness statement. So that point really has been clarified.

As to China State's criticism, at paragraph 103, of Mr Hui's lack of knowledge of the sample submissions in respect of soldering materials, and the delivery notes of a sample of FRY materials to site being unbelievable, one should bear in mind that the evidence of both Mr Cheung, that is 5 January, page 51P to 52H, and Mr Yung, 6 January, page 42Q to 43G, that the samples submitted by Golden Day were in the form of large sample boards containing various items pre-hung by Prosperity. In this context, the delivery note referring to a sample of FRY having been delivered to site does appear to be a bit odd, and it is not inconceivable that a roll of FRY soldering material among various items being hung on a large sample board might have escaped Mr Hui's attention.

So it is submitted that Mr Hui did come across as a straightforward and a truthful witness.

Lastly, in relation to the suggestion in paragraphs 151 to 152 of the COI's written closing submission that there might have been some concerted efforts to cover up -- to protect, you know, Mr Cheung in relation to the preparation of the so-called forged invoices, we would say this. It is accepted that that

such an event should have occurred was unfortunate, and it could only be foolishness and naivety that could have led to such conduct. However, it is accepted that forgery per se was not a cause of excessive lead in drinking water. As regards whether there was any concerted effort to protect Mr Cheung, it is submitted that there is no evidence to support this suggestion. There was nothing "convenient" about Mr Cheung being absent from Hong Kong at the time. Mr Cheung was away from Hong Kong several days before the lead water incident came to light. Before that, it cannot be said that Mr Cheung would have predicted the scale of the saga and considered it necessary for him to disappear from Hong Kong. If it were to be suggested that Ms Lam was not the real forger and there was a concerted effort to save Mr Cheung, then there are two flaws in relation to this suggestion. Firstly, one cannot discern from the evidence who that other party could have been and why Ms Lam would consider it necessary for her to claim responsibility for the forgery, for the alleged forgery.

Secondly, there's no corroboration between Mr Yung and Ms Lam's evidence that there was any concerted effort. Mr Yung's evidence was that his instruction to Ms Lam was only to find the delivery notes for solder wires. That's 6 January 2016, page 118, lines F to Q of

the transcript. Ms Lam, on the other hand, was adamant that she had understood Mr Yung to mean that she had to produce the forgeries. What is not disputed in the evidence is that the word "forgery" was never mentioned in the conversation. Ms Lam, in her evidence, on 7 January 2016, page 93, lines H to P, does not deny that based on Mr Yung's instructions she could have found out from Prosperity whether there were delivery notes in relation to the lead-free solder.

So we would agree with what the COI's counsel said, that there is simply insufficient evidence for any firm conclusion to be drawn as to the motive or the existence of any cover-up.

Those are my submissions.

CHAIRMAN: (Via interpreter) Thank you.

Tomorrow morning we will continue at 10 am. Any further question? If not, thank you very much.

(3.28 pm)

(The hearing adjourned until 10.00 am the following day)