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2016年3月17日

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上午9時33分恢復聆訊

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CHAIRMAN: Yes, Mr McCoy.

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DR McCOY: Mr Chairman and Commissioner, on behalf of Paul Y General Contractors Ltd, my submissions will be very short, in summary.

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It is highly likely, we suggest, that the Commission will find that the reason lead is found in water in public housing estates is because of a number of factors, principally the use of lead solder. But the problem that is before the Commission would not have happened, or perhaps would have been found much more quickly, if a number of other factors had not existed.

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First of all, the Water Supplies Department

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effectively took the position that their responsibility stopped at the inside service boundary. The Housing Authority took the view that they could rely upon the specialist assistance of the Water Supplies Department for the housing estate area.

On analysis, therefore, no party was taking responsibility inside the housing estates for water quality. Instead of both being responsible, overlap, we have the opposite, underlap, in which no party appears to believe that it was responsible.

The Housing Authority appears to have taken the view, and the Commission will remember the rather self-contented way the Housing Authority officials gave their evidence, that as long as they had a contract with the contractors, they had absolved themselves of all responsibilities, legal and social.

That cannot be right. The Housing Authority cannot make the contractors more responsible for their own fundamental failings.

Under the General Conditions of Contract, the Commission knows that at any time the Housing Authority could have required the contractors to test for the presence of lead in water, but that would have been a variation of the contract, meaning the Housing Authority would have had to pay for those tests.

The Commission may conclude that overall, a fundamental and overarching cause was the lack of awareness of the risk, by all, in the process.

We know the Water Supplies Department effectively delegated their responsibility for the installation to the licensed plumbers, and the Commission will determine that there does not exist any robust training or vocational requirements for licensed plumbers.

So effectively the parties at the very top had

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cascaded down their responsibility to the person at the very bottom, namely the licensed plumber.

While undoubtedly lead solder is a major cause of the levels, it's plainly, on our case, not the only cause. The Commission may recall the Hong Kong University masters thesis of 1987 actually showed then higher levels of lead than had been found in the housing estates, and the evidence of Prof Bellinger was that because lead doesn't degrade, doesn't transmute into something else, it simply is retained in the environment. So the Hong Kong ecosystem is going to trap the lead dust inside the environment and the shape and configuration of public housing estates may lead to that more easily happening.

So the sources of lead will also be the historical uses of petroleum, lead petroleum, in Hong Kong, because that lead simply cannot lead the environment except by wind or by water. The two housing estates that Paul Y is involved with happen to be adjacent to hot-spots where there had been massive lead petroleum usage in the past.

I have already referred to the demarcation dispute as to responsibility between HA and WSD. Of course, the Housing Authority has some 500 to 600 qualified professionals, tertiary education and high professional achievements, and they are undoubtedly utterly reputable, highly qualified specialists in every aspect of design, building and construction, and the Housing Authority has been an extremely good success for Hong Kong over the years.

Paul Y are builders. We are general contractors. It's even in the name of the company.

In terms of any responsibility, it is our submission that the relativity of responsibility of the contractors must be less, much less, than that of the

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Housing Authority, with all of that expertise and resources. It would be quite unreasonable to expect the contractors to carry a responsibility greater than the party at the top, which flourishes all that ability and expertise.

We also know that the Housing Authority sat with the Water Supplies Department on various committees. The contractors are not party to that. We know that the Water Supplies Department had a most inadequate if even existing research capacity. We know they don't know how to measure water and sample properly. Their repeated failings will be obvious to the Commission. In fact, they must have had so many shocks throughout the course of this Commission, they are probably better now known as the Water Surprise Department than the Water Supplies Department.

The final position that I advance on behalf of the Paul Y contractor is that when it's looked back, the responsibility of the contractor is to do its best in terms of the contract. The Commission knows that the terms of the contract not only identified lead but also cadmium, which is even more potentially poisonous than lead, yet there was no process in place for the testing of that.

The fundamental submission is that the contractors must have significantly less responsibility. At the end of the day, as the World Health Organization emphasised in the introduction to their standards, clean and drinkable water is a human right. There is a specialist government department in relation to water. That's its only job. Yet we know, if we had relied upon the WSD, even now there would have been no testing of lead in water. It wasn't the WSD that found the lead in water; it was a member of the public. So there's a fundamental and, we submit, structural inadequacy in that department.

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Those are the submissions that I wish to make. I am obliged.

CHAIRMAN: Thank you very much, Mr McCoy.

何先生：多謝，主席；多謝，呢個委員會。

我相信聽咗幾十日嘅證供，有一個都相當明顯而且應該都係一個不爭嘅事實，就係呢件事，點解嗰啲食水喺公屋裏面有鉛，係因為有人用一啲含鉛嘅物料，而令致到呢一個食水係會有鉛嘅成分出現，咁呢個亦都係同水務署嗰個 task force 最後嘅報告嗰個結論係相符嘅。

喺呢一個事實嘅基礎上面，當然呢一個委員會係會睇係唔係喺一個監管嘅制度上面有不足，嗰個成因係乜嘢。我哋喺我哋個書面陳詞裏面已經係將嗰個合約上面嘅責任或者係喺法例底下嘅責任已經係有一個好詳細嘅闡述。咁我就唔係想喺呢一個機會將每一個可能係涉及呢一件事嘅機構或者係人士係再重新再講一次嘞。

但係我想講一點，就係呢一個 phrase 或者 expression, "lack of awareness", 就重複咗好多次喺呢一個委員會聽到嘅證供同埋書面陳詞裏面。呢個 "lack of awareness", 中文可能會講係「認知不足」。咁到底我哋講緊啲乜嘢呢？咁水務署將嗰個認知就成咗四個層次，當然呢一個可能係即係經過都可能係細心去準備嘅書面陳詞，由律師去睇過，咁將呢一個係變成一個比較複雜--我覺得係比較複雜嘅陳述，將一個認知不足嘅問題，將佢分做四個咁嘅層次。

咁可能其實唔係真係咁複雜嘅。我哋講緊啲乜嘢？聽咗咁多嘅證供，尤其是我想委員會特別去考慮房委會唔同嘅證人上嚟畀嘅證供。其實嗰個問題就係大家可能都知道鉛對身體係會有害嘅。鉛喺呢個食水供應裏面嗰啲物料係唔應該存在或者應該係減到最低。

呢一個問題，可能咁講，呢一個咁樣嘅層面，一個咁概括性，鉛可能對身體有害，呢一個可能大家都有一定嘅程度嘅知識。我哋所講嘅話 lack of awareness, 其實我哋講緊乜嘢？我哋講緊係話冇意識到，如果用另外一個詞彙去講「冇意識到」，可能就係話冇為意，咁我諗係最直接可以表達到我哋呢一個問題嗰個癥結喺邊度，冇為意，冇為意到某一啲問題嘅風險。

冇為意到乜嘢呢？我睇到嘅有兩個問題。第一，就係會有人用一啲違規嘅物料，係尤其是喺呢件事裏面，我哋講緊係焊料，我哋針對

嘅係焊料，冇為意到。第二，就係冇為意到如果用咗呢啲違規嘅焊料，可能對食水嘅質素或者佢個後果會係乜，個影響會係點。

因為冇咁樣嘅為意，冇咁樣嘅知識或者認知，可能應該可以咁講，冇咁嘅認知嘅時候，更加唔需要講話「諗，你知唔知道如果水食含鉛之後，會令嗰個水食呢係可能會超出世衛嘅標準呀」，乜嘢，乜嘢，乜嘢，一連串以後嘅問題，咁呢個更加係冇一個--可以咁講，冇一個認知。

我想將呢個問題其實--喺呢一個委員會嘅書面陳詞裏面，佢嘅 62 段，喺第 26 頁，委員會。呢一段裏面其實都點出咗我哋所講嘅 lack of awareness，到底我哋講緊啲乜嘢呢。第 26 頁第 62 段嘅第(4)小段，呢度就咁寫嘅，去到第四行：

"The Commission has heard evidence from the relevant chief architects that they knew about the harmful effect of lead in general but were not aware of the risk of excess lead in drinking water arising from the use of leaded solders."

然後跟住就引述咗 Ann Mary Tam，其中一個總則師嘅講法，佢呢度講嘅：

「咁係我諗係一個問嘅，即係如果話即係法例要嘅嘢，我哋[會]做...落去，但係有時個 building industry 裏面好多時做嘅嘢最源於係乜嘢，或者佢--其實係最緊要...跟住會一牽涉連帶動嘅 risk 係幾多，就未必我哋會知得到嘅，或者我哋 aware 到...」

Sorry，應該係咁講：

「...就未必我哋會知得到...，或者我哋[會]aware 到，可以咁講，唔係唔知道，而係唔 aware 到，如果話[係]一個 trade 一路係[咁]做，而係做咗好耐，亦都有喺任何嘅 trade 或者 regulatory...方面有警覺過我哋，我哋就係--我哋跟[咗]個 trade[嘅]practice 一路去做。」

我相信呢一段說話其實就係講咗呢一個 lack of awareness 嗰個精髓，係冇為意到某一啲風險。

喺委員會律師嗰個陳詞裏面都有相當多嘅篇幅講番去 2002 年，當房署、房委會研究引入一個銅喉，比較大規模咁引入個銅喉嘅時候

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嘅一啲過程。委員會亦都聽咗嗰個證供，亦都係曾經再第二次傳召番房署嘅副署長馮女士上嚟，係就嗰件 2002 年當時所發生嘅提交咗一啲文件，而亦都有問題問過馮女士。

我淨係想帶番出嚟，我哋睇下當時嗰個背景係點樣。當時嘅背景，大家都可能會記得，就係點解會房署會--房委會當時諗入個銅喉，嗰個背景就係房委係當時有一啲維修嘅工程都已經部分係用緊銅喉。但係外面嘅其他唔係公屋嘅地盤，個銅喉係已經廣泛咁樣使用。

銅喉亦都有佢嘅好處，因為譬如好似喺接駁個銅喉嘅時候係比較方便。房委當時嘅處理係非常之謹慎、非常之小心。你見到一連串有一個叫做 liaison group, LGCQ 嘅會議嘅紀錄，喺副署長嘅第二份書面證供裏面係已經呈交咗畀呢個委員會。

喺處理嘅過程裏面，考慮好多方面嘅嘢。唔係就係話外面用，我哋就可以即時去引入，而係考慮咗唔同嘅方面。咁亦都--可能委員會會記得，當時喺房委裏面亦都係做咗一份報告，或者大家可能--或者都想睇一睇，喺 15.4, B15.4, 40002, 呢一份當時亦都係有考慮過呢一份報告，B15.4, 40002。

係嘞，呢一份報告，就咁睇落去第 3 段，大家睇到當時係考慮係作為當時用個 uPVC-lined GI pipes 同埋轉--如果係引入銅喉嘅時候作一個比較嘅，乜嘢 advantage and disadvantages, 有咩嘢好處，有咩嘢可能係應該唔好處咁樣。咁見到喺譬如好似銅喉上面嘅好處，即係話我哋其實嗰度睇嘅都係話個 pressure, 佢可以 withstand 到嘅 pressure, 喺個壓力上面；第二，就係嗰個 corrosion resistance, durability, readily available in the market, ease of jointing。第二點嗰個可能係 formability, 即係可能係比較容易使用嗰方面。

基本上同呢一個 uPVC-lined 作嘅比較，大體上當時考慮嘅就係喺個使用方面，喺佢嘅功能方面，喺佢個廣泛性係咪可以喺市場上面容易搵得到呢啲咁嘅銅喉嘅物料，呢一方面係作咗一個都相當詳細嘅研究同埋作出呢個報告。喺咁嘅情況底下先至引入咗用銅喉可以作為畀承建商多一個選擇，呢一個咁樣嘅做法。呢個係經過一個比較周詳嘅考慮同埋做過一啲市場上面嘅研究，各樣。

亦都委員會記得，同時間有個咁樣嘅方向嘅時候，亦都係話「啊，咁我哋喺嗰啲合約上面係咪應該都要 update 番啲合約，等承建商可以有更多一個選擇，去選用銅喉呢？」咁亦都有一啲文件大家可以睇

到，有個 working group 去將嗰啲 specification 或者係將嗰個 contract，將個合約嘅條款係去 update。

當呢一個--有一個咁樣嘅方向嘅時候，你哋記得個證供就係話交去畀 BSE。呢個物料嘅工程師去跟進點樣將、係咪有需要將嗰啲 specification 去再 update 番。咁呢個責任交咗去畀一位吳（伍？）先生，你哋大家都聽過證供。

唔好誤會，我唔係想迴避嗰個問題。我唔係迴避個問題，我亦都唔係迴避任何想講話責任嘅分配係應該點樣，而係我想委員會喺考慮，聽吳（伍？）先生所講，當時嗰個客觀嘅事實、背景係點樣。呢位物料嘅工程師接過呢一個工作，去 update 嗰個 specification，當時嗰個客觀嘅環境就係銅喉或者用銅喉用焊料，呢一個唔係一個當時新嘅一個物料嚟嘅。呢個喺其他嘅地方，除咗房署嘅工程之外，其他嘅地方都係有，有採用。

大家都記得呢個建築署喺 1993 年，喺佢哋嘅 contract 裏面都係已經講咗話唔可以用鉛，有鉛嘅物料，有鉛嘅 solder。

喺業界裏面，當時用咗一段時間，亦即係用咗銅喉用咗個焊料去接駁，當時冇任何嘅突發嘅事件或者係冇一啲跡象或者係事件去令到話「啊，呢一個係一個問題。」

我重複一次，我唔係話迴避嗰個問題，而係我相信我希望將當時嗰個實際事實客觀嘅情況係希望呢一個委員會去考慮。

喺呢一個選用物料去 update 嗰個 specification 嘅過程，聽到吳（伍？）先生講，基本上佢亦都用咗一個比較謹慎嘅方式去處理，就係話「我首先嚟講，我去睇一睇個法例嘅要求係乜嘢先。」咁打開本 WWO，WWR，個法例嗰陣時係寫 864，part 2 嘅用料。吳（伍？）先生自己本身佢知道呢個可能係已經唔係一個最新嘅要求，1254 先至係一個最新嘅要求。佢嘅團隊去睇咗 1254。佢覺得 1254 個表述唔夠清晰，喺第 6 嗰個附表裏面，對於呢一個用焊料嘅表述唔夠清晰。所以其實吳（伍？）先生本身係將嗰個清晰度係話覺得應該係要提高，所以擺咗落去個 specification 嗰度。

喺呢個過程裏面，我哋考慮到吳（伍？）先生本身可能佢係一個物料嘅工程師，佢個專注點，可能亦都唔難明白或者唔難去理解，佢當時嗰個專注點--尤其是你做完份報告講話---好多嘢係講嗰個功能，個 pressure，係咪容易使用，係咪喺市場可以容易去購買得到，呢啲佢嘅專注點，同埋佢覺得應該個將個清晰度係提高，呢啲係我覺



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得吳(伍?)先生係盡佢嘅責任去做,作為一個物料嘅供應嘅工程師。

咁你話其他風險又點...

主席:唔係,我明白。你特登要--但係特登抽出嚟講,一定有佢背後嘅意思嘅。

何先生:即係你都聽--我...

主席:唔係,我當然知道佢嘅證供係點講,不過我就即係話,即係我就係話係咪真係純粹咁簡單,係想希望人哋易明呢?

何先生:我係建議委員會去接受佢個證供。委員會問嗰個問題,我覺得唔係唔接受佢嘅證供嘅問題,係可能應該問個問題就係話佢冇為意,佢其實係咪應該要為意呢?即係可能呢個係嗰個問題嗰個所在。佢去將一個比較可能佢覺得唔清晰嘅地方去進一步令到佢清晰咗,而係從一個冇特別嘅事件、冇特別嘅跡象去話「啊,呢樣嘢要提高警覺」咁樣嘅情況底下去做咗呢一個咁樣嘅工作。

主席:唔係,即係我想表達嘅意思就係當然我知道佢講咩嘢嘢,不過個問題就係你--我都成日都--其實我哋都探討過,flux係從來都有講過。咁點解佢又唔擺呢個flux出嚟寫低佢呢?你明我嘅意思嘛?

何先生:我諗即係整個過程,整個過程係咪應該喺呢個鉛焊料嗰處要有更高嘅警覺性呢?咁我希望...

主席:其實我個心裏面就成日都有一個問題,不過我相信唔會有答案嘅。

何先生:如果唔--我亦都...

主席:吳(伍?)先生其實係有機會係知道嘅嘢係多過佢喺庭上高講畀我哋聽嘅嘢。

何先生:我唔建議委員會去推測。

主席:當然我唔會去speculate,係咪?啱唔啱先?

何先生:嘎。我...

主席:不過咁,但係你又睇番房署上嚟畀咗證供嗰啲人士,正如我哋嘅大律師都指出,有個line去toe㗎嘛,有個position㗎嘛,有條line嘅,個個都咁consistent㗎嘛。

A

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C

何先生：我唔建議委員會去即係用一個推測嘅角度去睇呢一件事。

C

D

主席：唔係，我當然我唔會，不過即係我會有一個咁嘅 question mark 喺我個心裏面啫，係嘞。

D

E

何先生：我哋都係睇個事實，睇證據，睇每一個人佢上嚟畀嘅證供。

E

F

主席：係，我明。

F

G

何先生：咁即係我唔...

G

H

主席：唔係，因為點解呢，我頭先講啲就係嘞，即係 flux，點解唔寫出嚟呢，咁樣樣，係咪？即係咁。

H

I

何先生：即係我諗某程度上委員會嘅大律師喺某啲方面係比較公道嘅講法。譬如佢話，喺佢嘅第 70 段...

I

J

主席：對邊一方有利啲啲咪公道囉。

J

K

何先生：我唔係想指正其他人方面，佢哋公道。我淨係講番佢就算對於房委某一啲地方，佢都算公道嘅。

K

L

主席：係。

L

M

何先生：因為譬如佢講話房委作為一個 developer 或者一個 contract manager，嗰個焦點唔係喺食水安全，個焦點係喺佢建築嗰個過程裏面。

M

O

我諗某程度上面，佢哋亦都有提出話，房委作為一個合約嘅 manager...

O

P

P

Q

主席：呢啲佢哋講啲大原則啫。咁唔通佢要寫到話「啊，房委會」--房委會當然最主要個 function、最主要嘅目的就係，即係好似佢哋咁講，啲樓唔好畀，係咪？咁唔通佢寫埋，「啊，仲有，啲電就唔好電死人，諗，啲煤氣又唔好令到人哋中毒」，咩嘢，唔會咁寫㗎嘛。

Q

R

R

S

何先生：唔係，當然呢啲係大原則。呢啲大原則，我唔係話呢啲大原則即係講過就算數，我覺得係認真嘅，係因為真係要了解當時房委佢會專注啲乜嘢嘅問題。即係呢個唔係我哋可以輕輕就咁...

S

T

T

U

主席：我諗房委會當時--我比佢哋講得更公道啲添，可唔可以？其實係應該係注意成個 building 各方面嘅安全問題，唔單只係起樓嘅問題，

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啱唔啱先？所以你唔可以話--即係當然我同意，係咪？咁個 lift 安唔安全，梗係重要喇，啱唔啱？啲電安唔安全，梗係重要；啲煤氣安唔安全，梗係重要；其實係方面都咁安全。所以，in that sense，水亦都係嘞，係應該關注嘅其中一樣嘢。

何先生：係。呢個就係帶番去嗰個問題就係 Professor Fawell，佢一個好 colourful 嘅 expression，eyes on the ball，係唔係每個人個眼球都係注視喺個波。個波，而家我哋喺呢一個委員會裏面所諗、所睇嗰個波就係食水安全、食水質素。房署有好多個波要睇，好似閣下頭先所講，佢整個過程，嗰個係咪要每一個範疇嘅進度符合法例嘅要求，符合唔同嘅監管機構嘅需要。

主席：係吖。

何先生：好多個波要睇。

主席：房署有一個波要睇，不過喺呢一個過程裏面有十一個球員，呢十一個球員都要睇。

何先生：房署喺呢一個食水安全嘅問題，委員會嘅大律師都講咗，房署唔係專責去睇呢個食水安全。食水安全係有其他嘅部門去睇嘅。

所以喺咁多個波裏面，你話我哋返番轉頭去睇 2002 年嘅時候，係唔係嗰一個出咗問題呢，喺嗰個 update 嗰個過程裏面係咪出咗問題呢？係咪應該要睇多呢啲嘢呢？

我只可以講話我唔係--亦都我重申再講，我哋唔係想迴避呢個問，而係當時我哋擺番咗個客觀嘅事實，同埋擺番咗房署嘅角色，擺番咗吳(伍?)先生喺佢作為一個物料工程師，佢個角度去睇嗰件事。

當然，如果你話當時有其他嘅人提點到，呢個可能--你用呢一個物料，雖然你喺你嗰個建造過程裏面你睇嘅就係，係咪使用，係咪--功能係咪--會唔會構成有其他嘅方面嘅影響，但係「喂，唔該，食水安全都係應該要有一個著眼點喺度。」如果有人提醒，成件事可能會唔同晒。

喺呢度我要提番就係當然喺 2002 呢一個過程裏面，房署係曾經問過水務署嘅。有啲嘅講法就話，嗰陣時問係唔係淨係問嗰啲...

主席：Drawing。

B

B

C

何先生：...喉嘅走勢，嗰啲走位嗰啲咁樣。其實你睇番嗰個 memo，我想係即係 make 一個好簡單嘅...(聽不清)我請你睇嗰個 B15.4, 40128 同埋 40130

C

D

D

E

主席：四零一三...

E

F

何先生：40128 就係房署畀水務署嘅 memo，41030 就係嗰個回覆。

F

G

主席：個回覆，嘅。

G

H

何先生：40128 先。你睇到第 2 段嗰度嘞：

H

I

"... we are considering to widen the tenderers' choice of piping materials for our standard block construction projects as follows:

I

J

Arrangement 1: ..."

J

K

咁嗰度唔講嘞，嗰個唔係好關事。

K

L

"Arrangement 2: A combination of ductile iron pipe and copper pipe ..."

L

M

And then 去到中間嗰度就係講啲 riser、啲 pressure 咁樣。

M

N

第 4：

N

O

"Please let us have your agreement/comment on the above arrangements in the selection of piping materials ..."

O

P

Q

呢個係講對於物料嘅選擇，你有冇一個特別嘅睇法咁樣。呢個第 4 點，in the selection of piping materials。

Q

R

睇番 40130，一個回應：

R

S

"I refer to your MUR and would like to advise that I have no comment to your proposed alternative arrangements for cold and hot water pipes."

S

T

冇，冇 comment，物料選擇，冇 comment。

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However, 第 2 點, 可能唔係同焊料有關係, 但係第 2 點都係有一個顯示性, 有一個-- it's revealing, 就係話:

"However, it is recommended that DI pipes to BSEN 545 with cement mortar lining instead of cold bitumen coated internally shall be used. Please be informed that all DI pipes used by our department for all public projects are internally lined with cement mortar to BSEN 545."

第 2 點係提點番房署某一啲關於 cement mortar, 某一個 BSEN 係需要注意嘅地方。一個收到呢個 memo 嘅人, 可能佢個注意力就會集中, 「啊, 你提番我呢樣, 我呢樣我要注意。」但係有嘢關於嗰個用焊料會唔會係有一個含鉛嘅風險, 或者如果係有一個含鉛嘅風險, 對於個食水質素會有啲咩嘢問題。

就算我唔去爭拗到底你演唔演繹嗰份房署嘅 40128 嗰份問你嘅 memo, 問你嗰個物料選擇, 係唔係淨係講 drawings, 抑或講即係邊處、邊一個段用銅喉好唔好, 即使真係你講嗰個--我唔覺得嗰個係應該咁樣去演繹, 嗰份問嘅 memo。就係話即使委員會如果話問個 memo, 就真係講 drawings, 講銅喉, 邊一個 part 個走位, 邊度用, 大細, 嗰啲, 房署可能 eyes not on the ball, not on 食水安全個 ball。但係問嘅單位, 被問嘅單位, 嗰個 eyes 嗰個 ball 同房署可能唔同嘅。咁個問題就係呢一個...

主席: 唔係, 呢度其實某程度上就顯示--因為你答嗰個人就係 chief engineer, 呢個人可能純粹係完全--即係其中一樣嘢我哋講到 departmentalise within 一個 department。呢個人完全係有興趣知道 water qualities 嘅。你明唔明我嘅意思?

何先生: 我唔去批評答呢個人, 我只不過係講番個事實啫。個事實就係如果當時係好似第二段提出某一啲問題, 你用銅喉, 你可能會用焊料做一個配料...

主席: 我明你講咩嘢。

何先生: ...嘅時候, 你可能有一啲嘢要關注到嘅。整件事可能嗰個知悉, 或者用一個好啲嘅 term, 係咪為意到呢一個風險; 用一個比較可能更加 vivid 嘅 term, click 唔 click。

主席: 可能唔 click, 完全唔--唔係, 即係...

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何先生：而家就係講緊唔 click 之嘛，可能。

主席：唔 click 唔單只係喺你哋身上。唔 click 仲係喺水務署身上。因為你--即係好簡單，作為水務署，你自己你唔可以話「因為時間過咗太耐，我嗰陣時啲人已經退晒休嘞，所以我而家乜都唔知嘅」，你唔可以咁講㗎嘛，啱唔啱先？

你 1938 年尾 ban 咗鉛喉。咁你某程度上你梗係知道有問題喇，係咪？

好嘞，到你去到一九唔知八幾年都好喇，當你寫 864 嘅時候，落去嘅時候，當你話 864, part 2 嘅時候，可能完全都唔 click 個喎，因為 C and G grade 都仲係有鉛吖嘛。你明唔明？

你去到 87 年嘅時候，佢都可能仲未 click 個喎。所以佢可能從來都有 click 過喎。

其實佢由 1938 年開始之後，當然，係咪我又經過好多，又第二次世界大戰，又暴動，又呢樣、嗰樣，individual 係可能完全冇 click，不過 institutionalise，你唔可以話你唔 click。

何先生：我唔係最好嘅位置去答閣下嘅。

主席：我唔 expect 你答我呢啲問題，係嘞。

何先生：王律師 no doubt 佢會有回應，我相信佢會作出嘅佢嘅回應。

但係我頭先就係想講，呢個就係嗰個客觀嘅背景嘅事實，而令到點解我哋講緊 lack of awareness 唔 click。

主席：不過 by the same token，當我講水務署嘅時候，房署係香港政府嘅一部分。

何先生：Housing Department，冇錯。

主席：係喇，即係房署，係囉。

何先生：即係我覺得大家喺真係個委員會裏面聽到 Professor Fawell 個闡釋，用呢個“eyes on the ball”呢個 expression，我覺得真係將個問題嘅癥結係講咗出嚟嘅，邊個人應該係有嗰個 eyes on 呢個 water quality 嗰個波，當其他人有佢哋嘅唔同嘅波要去處理嘅時候。

我相信呢一個，去到呢一個 2002 年，我哋曾經問過有關部門，得到個答覆，令到房署當時嘅人唔為意或者唔意識到或者唔 click 係咪其實，可以咁講，都係情有可原或者係可以理解嘅。我淨係想將嗰個事實背景係講番出嚟。我唔係迴避。我重申講我唔係迴避嗰個問題。

主席：我明你講咩嘢。

何先生：而係講個責任嘅分配嘅時候，可能呢一啲就係客觀因素，呢個委員會係應該要考慮嘅。

我哋亦都係--你都聽到好多證供係講唔同嘅波，專工專責，尤其是稍為後期，1 月份嘅時候，委員會係收到呢個 Hong Kong IA, Institute of Architect, 嗰份嘅書面嘅意見。佢提出一點就係專工專責。咁你喺個法例嘅框架底下，呢個專工專責呢一樣嘢亦都喺當時--你如果睇番 2006 年嘅時候，一個背景嘅因素嘅，你喺水質安全 WWO, WWR 底下，所謂嘅專工專責就係一個水喉匠，嗰個持牌有監管嘅水喉匠。

你喺唔同嘅其他粒，有粒嘅監管嘅機構，你風、火、水、電，即係都大家呢啲 expressions 其實係可以好聚焦嘅。風、火、水、電，冷氣、消防、水，我哋而家係知道，電，電機工程，lift; gas, 煤氣。專工專責亦都係背景嘅一部分，當委員會要考慮責任分配嘅時候。

如果大家明白咗嗰個當時唔為意或者係有嗰個意識嘅時候，就你所引伸一連串以下嗰啲你話譬如好似，「啊，你嗰個 6210 嗰個表格係咪有漏洞呢，點解你唔睇嗰個 solder, 嗰個焊料嗰個問道呢，或者其他嘅可能有重金屬嘅風險嘅問題呢？你請嗰啲承建商交咗一啲物料嘅 sample 之後，你有冇去比對呢？你喺 on-site 嗰度係咪需要 check 多啲呢？」呢一類全部嘅其實係都係源於最初嗰陣時，個問題就係有--唔夠一個意識或者係嗰個警覺性嗰個問題。

如果有警覺性，呢一啲咁樣嘅你可以話係 control measures、monitoring measures 係絕對唔難去加強。即係唔係話躲懶，專登去迴避，或者係其他嘅問題，而令到呢啲 control measures 唔夠去足以睇到呢一個漏洞，而係嗰個意識嗰個問題。都係返番嗰個意識嘅問題。當時真係如果有多少少提點，將你嗰個意識係集中番喺嗰一個問題，其他呢啲根本唔係一個唔處理嘅問題。

而係好肯定房署自己本身有一套都相當好嘅風險管理，

B

B

C

risk-based 嘅物料嘅監控嘅措施。房署，你亦都聽到...

C

D

主席：不過 in respect of plumbing work 就真係有啲。

D

E

何先生：呢個就係我想委員會睇番嘅就係當時嗰個實況係乜嘢。

E

F

主席：唔係，你唔單只係話--即係我哋唔單只係話一樣嘢你有聚焦咁嘛，而實際上係--你睇番，即係返番去 PLU1，係所有嘅嘢都有聚焦咁嘛，除咗嗰啲咁嘅咩嘢 bracket and anchor 嗰啲，嗰啲到而家其實都有人可以 convince 到我究竟係點解又要 sample submission，又要 delivery on-site 嘅時候，又要有人喺度睇，其實...

F

G

G

H

何先生：呢個 6210 只不過係監控...

H

I

主席：唔係，我明。

I

J

何先生：...嘅 aspect 嘅一部分，唔係完全，唔係個監控嘅全部。

J

K

主席：我嘅意思即係 somehow 呢個 bracket and anchor 就梗係之前就一定發生過一啲事，係重要到係要咁樣樣去睇嘅。

K

L

何先生：係嘞。

L

M

主席：係咪？但係除咗呢啲咁濕碎嘅嘢之外，就其實你成個食水嘅系統都有人睇嘅，實際上係。

M

N

何先生：呢個--即係就係嗰個大家去做嗰個風險嘅管理。

N

O

主席：所以你--我知。你唔可以話呢度完全冇 risk 㗎嘛，或者，係咪？如果做完個 risk --即係我哋知道個 risk assessment 裏面當然係有兩樣嘢嘅，第一，就係究竟 likelihood；第二，就係個 consequence，就係個 impact，係咪？即使你個 likelihood 係細，但係如果你個 impact 係大嘅話，你都要做㗎嘛。

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何先生：係。

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主席：係咪？所以其實你而家睇番你哋成個 plumbing system，即係我哋睇番 PLU1 啫，其實講嚟講去。PLU2，嗰啲外觀嗰啲嘢，重要嘅，咁於是你哋就乜都睇，顏色又睇，形狀又睇，乜都睇，whereas --即係同樣一樣，water qualities 你哋係完全唔睇囉。

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何先生：我想回應番嘅就係一個 risk-based 嘅 approach，6210，你

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都聽到點樣去 develop 到出嚟，呢個唔係憑空想像去整一份咁嘅嘢，好 arbitrary，睇到三十二樣嘢。係有好多嘅因素去...

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主席：不過我明嘅，我明嘅。

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何先生：...做成一份去...

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主席：我完全唔會同你爭議 6210 裏面所講嘅嘢，不過如果你話「啊，食水系統，如果我哋有做過個 risk assessment」嘅話呢，我就暫時都未睇到囉。

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何先生：嗰個--就係因為--我頭先返番去個 lack of awareness 嗰個問題。個 lack of awareness 係因為有咁樣嘅...

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主席：唔係，你有個 awareness 嘅，其實。你有個 risk assessment 做過嘅，即係 at --應該咁講，at least --我哋而家講 solder 嚟講，因為當時你特登要抽出嚟咁嘅。

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何先生：係。

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主席：即係喺呢一個人嘅心目中，呢一個可能係一個 hazard 嚟嘅。

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何先生：呢個佢冇為意，冇為意之後，可能有人...

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主席：我知，我明，我明，我明。佢可能會話「啊，我哋」--甚至佢可能會話，即係如果我哋講番用番啲正常，即係一般個諗法，「啊，呢個係一個 hazard 嚟嘅，所以我要抽出嚟講，要注意。」好嘞，「Likelihood of 發生係幾多呢？啊，好少，因為我 specification 已經寫晒嘞，嘎，我相信你哋啲 contractors 會跟喇。」係咪？但係你如果再細仔去睇嘅話，佢個 awareness 冇咗去邊度呢？就係後面嗰一 part，我頭先所講嗰個，就係佢嗰個 effect 究竟係--佢個 adverse effect 係幾大，嗰度佢就唔知嘞；就係呢度佢唔知嘞，可能。

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何先生：冇錯。

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主席：咁所以就跟住就唔再有任何嘅進一步嘅嘢做嘞。

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何先生：冇錯，冇錯。我唔反對咁樣嘅分析。即係嗰個 lack of awareness，對於如果係有參入咗呢啲唔符合規格嘅物料，對於個食水個質素嗰個影響個程度，咁呢個...

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主席：咁你就喺呢一部分就隔離嘞，...

何先生：Click 唔到嘞。

主席：...隔離要話畀你知嘞。

何先生：嘎。你譬如嗰個物料，你頭先都講會唔會係人會用錯物料呢個風險，呢個係程度高低。當時我所講嘅就係話冇為意，亦都係基於當時一個客觀嘅情況，就係話用咗銅喉唔係新事幹，一連串冇，業界裏面亦都有特別去提出呢個係一個問題。同理，法官，我相信我哋喺個書面陳述嗰度都特別引用咗水務署自己請上嚟嘅 Hugo Kan，簡國樑先生，佢部分嘅證供。佢係一個好資深、好盡責嗰一類咁樣嘅水喉匠。咁佢都話呢件事發生咗，佢都覺得有啲奇怪，因為佢以為成個業界都會係用緊一啲喉，合符標準嘅物料。

一個咁樣嘅資深嘅業界，day-to-day 做緊呢一樣嘢，佢嘅講法都相當符合，我覺得係實情嘅，就係大家都冇為意嗰個有可能有人會用咗一啲不合乎規格嘅物料。我相信，作為佢最前線，有啲係即係稍為對於唔係最前線，譬如好似房署，作為一個 developer，作為一個 AP 或者係 BSE，佢哋冇特別去為意呢一方面嘅風險，可能係可以理解嘅。

主席：其實你睇番今次十一個受影響嘅屋邨，佢哋嘅落成時間由 2008 年開始去到 2014 年，所以其實--即係當然我哋而家淨係講 affected 嘅，但係我哋亦都知道有一啲所謂 non-affected 嘅都搵到有鉛。所以其實你又唔可以即係客觀上去講，你又唔可以話真係「啊，原來完全唔知個嗰」咁樣樣。

何先生：即係事實出到嚟，你個水個讀數係--即係講讀數係 reading 嗰個讀數，...

主席：係。

何先生：...唔係 toxicity 嗰個毒素。Reading 嗰個讀數，係出到嚟，呢啲係客觀事實。但係同番--你呢一個客觀事實唔可以即時就去到話「啊，當時你知，因為嗰個認知 click ...」

主席：唔係，即係我嘅意思你如果咁多年，咁廣泛，唔同嘅屋邨都有呢啲咁樣嘅問題嘅話，咁其實係咪真係好似我哋所聽到嘅，「啊，原來呢啲係 isolated incidents 嚟啫，只不過係有人唔生性，走去用咗啲唔應該用嘅嘢呢」？

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何先生：即係我只係提出番呢一個委員會聽咗咁多人嘅證供，基本上除咗有啲係真係話「我知道，但係我都用」，大體上，尤其是簡國樑先生，係一個好好嘅例子，就係其實喺呢個業界，呢一個話會用唔合乎物料嘅，真係冇呢一個咁樣嘅跡象個出現。咁我覺得呢一個係委員會應該要考慮番嘅客觀事實。

主席：冇呢個跡象，係因為從來都冇人驗過水裏面有冇鉛囉。

何先生：咁返去驗嗰度，係咁我...

主席：同埋--唔係，甚至水裏面有冇鉛，甚至係嗰啲 joints 有冇 test 過，啲 components 有冇人 tests 過，都完全冇人驗嘅。

何先生：即係我表達番嘅就係呢一啲客觀嘅事實背景，係委員會應該要考慮嘅。

主席：我明白你講乜嘢嘢。

何先生：頭先我可能我中文嗰個 translation 用得唔好，BSE 係我頭先好似用咗物...

主席：你講過物料嘅。

何先生：講錯咗。亦都都因為嗰個物料 engineer 係 material engineer。BSE 係另外一個範疇嘅，係建築設備工程師，應該係。

主席：係。

何先生：我要更正番，呢個係我自己本身喺 translate 上面嘅，佢唔係物料...

主席：冇 translate 錯，係你真係講「物料」嘅，不過明你講乜嘢嘢得嘞。

何先生：多謝，多謝。

所以我諗我可以簡單講嘅就係當有其他嘅意見話「啊，房署喺呢度做得唔好，喺嗰度冇擺一個 control measure，有跟住落嚟你個 6210，你個 sample 嘅比對，你其他嘅方面都有漏洞喺度」，覺得歸根究底都係返番去最初我哋呢個認知不足同埋嗰個唔為意、唔意識到嗰個風險個影響係有嗰個直接嘅關係。同埋我希望你考慮一系列嘅背景，當時嘅情況。

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當然亦都考慮嘅就係法例嘅規管嘅架構。最前線關於呢一個 plumbing，呢個做喉管嘅責任係喺個 LP 嗰度。只有 LP 先至可以做呢一個 plumbing 嘅 installation 同 construction，有 contract（合約）上面嘅責任嘅規管。我唔同意主承建商佢話佢嘅責任可以推晒落去話「房委，你又冇--如果你叫我，畀我 test，畀錢我去 test，我會 test 呢啲嘢。」呢個唔係一個好嘅...

主席：佢冇話推晒落去你哋嗰度，佢話唔應該大過你哋啫。

何先生：即係呢點我係覺得應該有商榷嘅。因為最前線 constant continuous supervision 呢一個責任係喺主承建商嗰度。呢一個合約上面嘅責任，佢哋係有一個不可推卸嘅責任。佢係巡地盤。

而且每一個工程做之前，每一個主承建商都要向房委交一份叫做 subcontractor's management plan。我哋喺我哋個書面陳詞已經用咗其中一份，China State 嗰一份，好詳細咁睇過，亦都每一位上到嚟嘅主承建嘅代表，我哋都有 go through 嗰一份 subcontractor's management plan。份 subcontractor's management plan 裏面好多唔同嘅條款嘅，包括話佢哋會檢驗所有入到嚟地盤嘅物料。呢一個咁樣嘅講法，我哋而家知道同實際嘅做法就有出入。但係如果佢哋係做咗佢哋嘅講，佢哋係做咗佢哋合約上面嘅責任，呢件事可能亦都唔會係咁樣發生。

所以我哋喺睇房署嘅角色，喺制訂一啲監管嘅 monitoring measures 裏面，唔可以話我哋唔需要考慮呢一啲合約上面佢哋話畀我哋聽佢哋會做到啲乜嘢，呢一啲咁嘅咁都係喺嗰個背景裏面應該要考慮嘅因素嚟。

我想委員會亦都考慮到其實房署對於呢件事發生咗之後，佢哋都會--已經係一個好積極去處理呢一個事件。首先 7 月，呢件事曝光咗之後冇耐，房署已經委派咗佢自己有個 review committee。個 review committee 喺 10 月份嘅時候已經做咗一個初步嘅報告，然後 12 月尾嘅時候已經係交咗--即係向公眾已經係發放咗佢最後嘅一個 final ...（聽不清）。呢啲係房署係積極公開咁樣去面對呢一個鉛水嘅事件。

嗰個 review committee 裏面亦都有一啲好有建築性嘅建議，譬如好似應該要中央去統籌購買呢啲物料，尤其是呢啲可能出現係問題嘅物料，要求嗰個承商應該要將呢啲物料，購買咗，嚟咗地盤之後，除咗檢測之外，要好好咁處理，要鎖好呢啲咁樣嘅物料，要有好

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適當嘅紀錄等第時可以--如果出事嘅時候，可以跟進番到底邊個人可能做錯咗；或者用，錯誤咁，或者係；總之係有個跟進嘅機制。

呢一類咁樣嘅措施係已經進行緊。Professor Fawell 亦都好肯定呢一啲措施係而家 eyes on the ball，咁係會有效咁處理到呢個問題。房委其實--我希望委員會係正面去睇呢一啲跟進嘅措施，現時嚟講，對於呢個減低一個不幸嘅事情嘅重演嘅機會應該係大大咁樣降低。

我仲有三樣比較簡單嘅回應。一點就係話嗰個 ACQWS，第7號文件。嗰處--委員會亦都聽咗黃比先生、S C Chan 嘅證供，當時呢一個文件大家記得係2001年嘅文件，當時房署係未正式話會全面用銅喉。但係無論點都好，嗰個 ACQWS --我想指出一點嘅就係黃比先生當時係以--佢雖然係房署嘅代表，但係當時係講緊 maintenance，佢係一個 management division，maintenance 嗰個 division 嘅身分，所以佢喺參與嗰個會議個角色係以從一個 user 嘅角度，一個使用者，或者需要負責呢個維修、處理，嗰個物業管理嗰個角度去睇，去參與呢個會議；咁亦都係當時亦都--大家都睇到，即係呢個文件所針對當時嗰個討論係講 discoloration，個黃水事件。

所以如果話對於黃先生要--話佢當時點解唔將呢件事去傳番去--或者其他外國嘅情況，傳番去房委，其實我覺得當時黃先佢絕對唔係話，啊，已經係呢一個係當時個討論焦點，一啲都唔係咁樣。大家睇到嘅，當時個討論焦點係講嗰個黃水嘅事件，所以話唔 click，亦都係我覺得係情有可原。

主席：我有少少意見想講。我明白當時個重點係喺嗰度。咁但係銅喉做維修又唔係新鮮嘅事物囉喎，係咪？某程度上，雖然你可能會話「啊，我用 compression joints」，係咪？但係個問題就係即係你唔可以話「啊，因為我哋用 compression joints，因為我哋而家所以係用--我哋處理生鏽喉，所以我所有其他嘅嘢呢我就--我諗嘢就淨係一條直線嘅啫，咁樣樣我唔會諗下隔離嗰啲嘢咁」，又好似唔係好--當然我明白你咁講，不過我就話「喂，你諗嘢唔係一條直線咁諗㗎嘛。」

何先生：即係有時 click 唔 click 就係即係你係咪諗有時你--如果要諗你 eyes of the ball，有時你諗樣--有時諗都會諗多啲。即係我唔係話唔應該諗多啲。

主席：係。

何先生：但係就係因為嗰個，第一，嗰個角度去睇呢件事，可能唔 click

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就係唔 click。嗰個角度，個客觀事實，...

主席：咁咪返番去阿 Fawell 嗰度講囉，你“ought to have clicked”囉，係咪？

何先生：即係呢個就係我希望委員會講到“ought to”抑或“唔 ought to”嘅時候去考慮嗰啲背景嘅因素同埋每一每一個人嗰個處境，當時嗰個客觀環境底下嗰個問題。咁係我第一個責任分配嗰處，我希望委員會係著眼。

黎先生：呢個有少少會唔會係將嗰個冇意識、唔為意呢個概念，如果係無限咁引伸嘅話就好危險嘅，即係呢啲係你部門嘅管治有好大問題，如果係咁鬆散嚟到去話「因為我唔知，冇意識，唔為意呢啲咁嘅事」，係好危險個喎？

何先生：我覺得如果喺譬如你專責嘅範疇裏面，你個意識係應該高嘅。即係譬如喺一個 construction 嘅角度，房署係應該係有意識高嘅。但係你當呢一個範疇，我哋講緊個波，房署唔係專家嘅時候，咁我只可以講話，啊，佢哋嘅意識係唔係可以提高啲，係咪個警覺性可以提高啲，我哋而家事後睇番轉頭，有啲地方係可以做好啲。但係當時亦都係有一個我覺得係應該明白、係可以理解，點解當時嗰個警覺性係唔係好似而家大家所有眼睛都去嗰個問題嘅時候嗰個警覺性提高。

黎先生：因為我譬如話我自己喺政府咁多年，就算我代表個部門出去開會，我唔會純粹話係睇番我自己個範圍嘅嘢。你代表得嗰個部門，你就係要睇埋其他同事範疇嘅嘢嘅。

何先生：我唔反對個咁樣嘅講法。我而係只係講話，當時點解嗰個 paper，大家對於個 paper 裏面嗰兩段個警覺性唔高，係因為當時嗰個焦點唔係喺外國嘅 experience 嗰處。嗰個焦點當時從一個 user 嘅角度去睇，而當時亦都係處理緊一個黃水嘅事件，嗰個就係...

主席：呢個太窄嘅演繹方法，我哋覺得，係咪？黃水當然係喇，黃水，但係個問題，即係正如我哋講過，黃水係咩嘢造成、構成呢？重金屬嘅。

何先生：即係我係希望...

主席：係咪？係喇。

何先生：...委員會係考慮好多方嗰個客觀因素。

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主席：即係你如果要咁 tunnel vision，睇到咁窄，「啊，呢瓣嘢，我去開會，呢個人唔係我代表，當時講緊嘅嘢係鐵喺水裏面乜乜乜，乜乜乜，所以我完全唔 click。」我明你講咩嘢嘢，不過我哋就話咁唔應該喎。

何先生：即係而家當然事後喇，benefit of hindsight，即係大家個集中力同當時去集中處理係當然係有個分別。

主席：你唔可以咁講嘅，因為你 public administration 你都講唔通喇，如果咁講，啱唔啱？我去--譬如好簡單，你有機會派出去一啲國際會議，咁有幾何會有一個人識得晒全香港所有嘅嘢，有可能。

何先生：即係我亦都覺得一啲事實就係嗰個 ACQWS 絕大部分嘅都係水務署嘅代表。

主席：明白。

何先生：如果當時係話呢一個係一個重點要考慮嘅，一個提點，可能大家其他與會者會 click 嘅機會就高啲。

主席：唔。

何先生：另外一個比較簡單嘅簡短回應，就係李柱銘大律師裏面所講嗰個有啲 discarded samples，有啲 unannounced results。我相信我只需需要請委員會睇一睇委員會嘅大律師最後呈上去，C21，191，有個 press release，2月5號嘅 press release，嗰處已經係解釋得比較清楚，到低嗰啲係乜嘢嘅情況。

主席：又唔係好詳細㗎咋喎，其實。

何先生：唔係好詳細，但係亦都唔係...

主席：係呀，好概括㗎咋喎。

何先生：即係我覺得呢個委員會個焦點亦都唔係喺嗰啲 discarded samples，亦都有話去深究嗰個 discarded samples 係一啲...

主席：唔係，我哋冇好詳細咁樣樣去睇下。

何先生：所以亦都唔需要喺呢一個委員會，我覺得作一個好--即係亦都有嗰個證據嘅基礎去作一個結論，關於嗰啲 discarded samples。

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主席：關於咩嘢 conspiracy theory。

何先生：咁譬如嗰啲 unannounced results，你揭去第二版，即係個 press release 嘅第二版，你睇到點解有啲 results 都仲未 announce 呢，因為嗰個唔係直情牽涉到嗰個 residential，而係有啲去到 commercial 嗰啲咁，所以嗰個亦都未係即時間係 announce 咗個 result。

所以嗰個 so-called conspiracy theory，我哋覺得係有根據嘅。

另外一點就係，一個好簡單一點，就係琴日 Mr Pennicott 講嗰啲 delivery notes。

主席：呢個我唔--除非你想講啫，我就...

何先生：冇。因為我只係想提番閣下，我哋喺當時呢一個問題有出現嘅時候，...

主席：呢個基本上我覺得唔係一個大問題。

何先生：...我記得我係擺咗四大個 bundles 出嚟嘅，咁我邀請各位去睇有冇一個...

主席：我諗我唔會去到呢啲咁...

何先生：咁我希望--如果，法官閣下，需要嗰個 evidence，喺 Day 26，12月11號，我有個 LiveNote transcript 嘅第18、第19頁，係有嗰個解釋嘅。

主席：我諗我唔會--係嘞，得，知道，明白。

何先生：係。好嘞，最後，如果委員會容許我代表房委會--即係幾段，作一個簡單嘅聲明。

自從發生食水含鉛超標事件以嚟，房委會一直非常重視各項善後同埋補救嘅工作。事件嘅發生導致到對部分公屋居民受到影響同埋不便，房委會上下嘅員工係深感不安。

對於經過呢一個委員會超過六十日嘅聆訊，然後你清楚了解到食水品質監管嘅機制裏面嘅各種不善之處，以致不合規格嘅焊料可以喺以往嘅機制底下使用而不被察覺係表示遺憾。



展望未來，房委會會注意到水務署喺呢個食水含鉛量超標專責小組所提出嘅各項措施，注意到發展局亦都表示會積極研究同埋跟進有關嘅建議，房委會將全面配合政府落實所有改善現時品質監管機制嘅建議，以防止同類嘅事情再次發生，同時係遵循監管機構嘅規定以外，房委會亦會不斷繼續不時檢討，以務求進一步提高公營房屋嘅質責。

多謝，主席；多謝，委員。

主席：唔該。或者我哋而家 take 一個二十分鐘嘅 break，好唔好？

上午 10 時 52 分聆訊押後

上午 11 時 16 分恢復聆訊

出席人士如前。

石先生：主席、委員。

主席：係。

石先生：我而家就代表委員會嘅大律師，同埋即係律師嘅團隊作出我哋嘅結案陳詞。

我首先就或者開宗明義就係講一講就--即係其實呢樣就委員會係本身當然會好清楚，但係其實好多時候都係值得重複，因為就好多公眾嘅朋友同埋媒體喺度。就係關於委員會嘅大律師佢哋嘅陳詞，嗰個地位係乜嘢呢咁樣。委員會嘅大律師嘅職能就同委員會本身係分開，我相信委員會本身都係好清楚，就係委員會到到最終法律規定，撰寫報告同埋作出一啲 recommendation，推薦，或者對一啲事實嘅認定，證據嘅衡量，全部都係委員會主席同埋委員兩個嘅決定，當然委員會當日委派咗律師嘅團隊，就係我哋對委員會履行佢嘅職能，作出種種嘅法律上嘅協助，譬如喺問證人嘅時候，可能我哋係唔會需要委員會主席或者委員自己親身落場去問，我哋係一個--譬如話係一個 arm of 呢個委員會，我哋去提議問一啲問題，或者係喺一啲法律嘅事情上作出一啲聯絡嘅工作。但係我哋嘅陳詞當然委員會係清楚，就係絕對唔係可以話係委員會嘅喉舌，好多系統裏面就有所謂官方喉舌呢樣嘢，但係我哋唔係屬於委員會嘅喉舌，我哋係即係以獨立嘅身分

向委員會作出我哋對一啲事實，或者證據上嘅一啲陳述，咁委員會當然係會有自己嘅看法。因為一個調查委員會、委員會嘅主席同埋委員係我哋叫做一個 inquisitorial 嘅 system，其實我哋大家都知道委員會喺呢個事情裏面，亦都好多時候係好 proactively 去--主動地去調查好多嘢，或者提出好多嘅問題。

所以我哋今日所講嘅一啲嘅陳述，委員會係絕對係有權可以接受或者唔接受，可能一陣間會對我問好多尖銳嘅問題都未定。所以就呢一個係開宗明義係對即係委員會同埋委員會律師團之間嗰個角色嘅分別。因為經常有傳媒嘅朋友都會問，就係話「啊，你寫完未呀？」咁個問題就係話唔係即係之前另外一個調查委員會都有類似嘅問題，就話「你見過未」，咁通常即係--我相信到到最終委員會嘅報告，係呈交畀行政長官嘅報告，唔係話第一時間會出街，呢個為之一般嘅程序。

呢個就係澄清咗委員會嘅律師嗰個陳詞，喺呢個整個 proceeding 裏面嗰個地位，嗰個 status 之後，首先我想有少少嘅開場嘅一啲比較籠統嘅陳述。首先就係，好多嘅調查委員會之所以組成，都係因為有一啲係重大公眾利益嘅事故，所以係會組成㗎喇。好多時候一啲公眾或者一啲公營嘅機構，或者政府嘅部門，佢哋嘅一啲舉措，都會係喺呢啲嘅調查委員會裏面係即係放在美光燈下，被放大好多嚟睇。好多時候會有好多好尖銳嘅問題向佢哋提出，甚至乎有一啲嘅意見，或者喺庭上嘅一啲嘅說話係令到大家會覺得係佢哋可能係十惡不赦，或者係一無是處。

但係我想即係開宗明義講開，同埋我聽到房委同埋水務署佢哋嘅陳詞，就可能佢哋都有一個咁嘅憂慮，我先先想呢個以正視聽就係，我哋係唔好忘記兩個公營嘅機構或者部門，水務署同埋房委喺一般嘅事務上，或者甚至今次鉛水事件發生之後，佢哋即係所付出咗嘅好多嘅 effort，好多嘅努力。譬如話水務署，我哋聽見佢哋嘅同事好多時候都講，就係話發生咗事情之後，佢哋好多時候同事驗水驗到三、四點，房委會亦都係即係做咗好多嘅工作，剛才何大律師都有提過。同埋即係香港嘅一般嘅水質，直至到到 connection point，就同埋房委會喺興建公營房屋，佢哋一般嚟講嘅質素同埋 effort，我諗我哋係唔能夠因為今次呢一件嘅事件，無論當--即係最後委員會作出乜嘢，對呢一件事嘅批評或者意見都好，一般呢兩個公營嘅機構或者係部門嘅一啲工作質素，我哋係唔希望係因為呢件事係令到公眾係抹煞，或者覺得佢哋係一無是處，呢個我哋希望可以喺度公道啲對呢兩個公營嘅部門同埋機構。

但係話雖如此，即係所有嘅機構都會有死位，或者都會有盲點，

所以如果即係喺某一個方面係呢啲死位或者盲點出現咗問題，而受到一啲嘅批評或者係論述嘅時候，就我哋嘅團隊嘅陳述就係，我諗即係相關嘅政府部門，就係即係其實毋須要係以一個過份 defensive，或者係所謂怨憤嘅態度嚟到對待呢個事情。因為好多時候我聽到水務署同埋房委嘅一啲陳述，佢哋好多時候，尤其是證人嚟證人台裏面嘅時候，即係真情流露嘅時候，就好多時候佢哋會好似有些少即係互相--我唔會講卸責。即係好似講話「點解你話我？點解你話我，唔話下你呀」咁樣。即係好多時候而家政治論述都係嘍，「你話我做錯事，做乜你唔話你自己呀」咁樣。

但係即係我想提出一樣嘢，就係其實喺呢個事情裏面，我哋係毋須要係太過著眼於究竟大家之間嗰個叫做 blame，或者叫做負面嘅批評，究竟--講得白啲，可能水務署同埋房委大家之間暗地裏嘅盤算，就係話「咦，委員會會唔會遲啲出份嘢出嚟話，水務署嘅 blameworthiness 係 60 per cent，房委係 40 per cent，死嘞，蝕咗章畀房委添。」咁房委好多時候亦都會調番轉頭，就係話「死嘞，你係咪應該講邊面個 blameworthiness 大啲呢？」咁樣。我哋律師嘅睇法就係，其實今次唔係一個所謂民事訴訟，一般好多時候民事訴訟，如果有疏忽嘅訴訟或者盛咁樣，法庭可能到到最終就會有啲叫做 apportion blame，就要量化就係話邊面嗰個受苛責或者疏忽嘅比率，呢面係 65 per cent，就要賠償 65 per cent 嘅損失；嗰面就 35 per cent。但係呢個調查委員會裏面，好多時候我相信即係調查委員會到到最終，佢作出嘅一啲比較 specific 啲嘅裁定或者係建議嘅時候，其實係毋須要，甚至乎即係我諗--即係委員會亦都未必係打算係會以量化嘅形式，或者以所謂比較嘅形式係嚟到去決定嘅。

因為我相信喺呢件事情裏面，兩方面以水務署同埋房委員嚟講，都肯定佢哋係每一面都係有一啲叫做不足嘅地方，我相信即係委員會到到最終。不足嘅地方，委員會我相信亦都係會用文字嘅方式去寫出嚟，但係係未必需要真係以比較嘅形，呢一度我相信兩個公營嘅機構，佢哋冇講到好白，佢哋嘅 instruction 可能都話「你唔好講到咁白喇」，但係我就可以好白。即係大家就可能諗住就係話「即係最緊要就係保住委員會，千祈唔好插我哋多過插對面。」咁即係我嘅 privilege 就係我可以講啲咁白嘅嘢喺度，佢哋都未必會認嘅，但係佢哋而家唔反對，即係表示其實即係呢個可能係。

王先生：我相信有可能，你唔可以屈人。

石先生：係，我唔係咁樣屈佢哋，但係即係講番轉頭，就係即係我諗--即

係我個 main point 就係，即係委員會其實佢哋喺度最終作出呢個報告嘅時候，佢哋係有需要--而我亦都係希望就係可以帶出呢一點，就係其實呢個唔係一個民事嘅訴訟，所以委員會其實係即係有需要係作出一個所謂相對比較嘅一啲嘅嚟嘅。當然如果即係有一啲特別嘅情況之下，可能委員會如果真係覺得、其實其中一方係負咗另外一方嘅，或者一方係合理地信賴咗另外一方，而另外一方係真係即係負人所託嘅，當然呢一樣委員會係應該係即係無畏無懼地提出。但係即係否則嚟講嘅話，我嘅陳述就係其實係冇乜需要，係需要量化雙方嘅 blameworthiness。

同埋好多時候就--即係好多時候剛才頭先何大律師佢嘅陳詞裏面，都即係用過好多好 colorful，即係好吸引嘅一啲比喻，咁好多時候就我諗委員會喺考慮嗰個陳詞，或者喺考慮呢個證供嘅時候，就我諗未必需要係畀呢一啲嘅比喻係即係太過糾纏，因為好多時候 eye on the ball 咁樣。頭先我哋都已經見到就係一個 eye on the ball，隻眼要睇住個 ball 呢一個嘅比喻，都其實可以引申到好多出嚟嘅，究竟係一個 ball 有唔同嘅睇法，定係有兩個波，定其實有十個波，所以其實呢一啲嘅比喻係未必一定係有幫助，呢個係 Professor Fawell 作為一個球迷。好多時候佢畀證供嘅時候，佢會講出嚟“eye on the ball”，但係我哋毋須要將呢一啲嘅比喻，就係講到究竟個 ball 係乜嘢呢咁樣。因為如果大家--我又講一個比喻，eye on the ball，其實場上所有十一個球員都應該望住個波嘅，得一個波嘅啫。所以就呢個係我另外一點，就係唔需要太過糾纏於一啲咁樣嘅比喻，或者一啲咁嘅例子。

另外一點就係，呢一點就係對房委同埋水務署都係合用。就係好多時候大家都會覺得就係話，喺一件咁樣嘅事故發生咗之後，就係睇下有冇人要人頭落地呢；或者有冇人要即係所謂 personal，個人地因為佢失咗職；個人地因為佢譬如話有份 checklist 畀住佢，話「啊，你面前有個 file，就擺到明你睇漏咗。或者你一般譬如話你 civil service manual，你裏面直情有一格你係要剔嘅，或者你有個 checklist 你要剔，啊，你剔漏咗。」咁樣，有冇呢啲咁嘅事情出現呢？定係我哋所指今次所謂部門嘅一啲所謂嘅缺失，係高層次一啲嘅缺失呢咁樣。

委員會睇過我哋陳詞之後，相信都會了解就係，其實今次我哋唔係話在乎有啲咩嘢人，係有一個好明顯地有個 box 要佢去剔，有一樣嘢要佢 check，而佢零零舍舍係冇 check 到嗰，所以呢一個個人，呢一個 officer 就要點名，要人頭落地嘞，呢一個我哋今次面對嘅事件，唔係咁樣。如果呢件事件，我哋覺得就係話如果有所謂 quote，

即係用引號嚟講，有任何嘅缺失或者過失，我哋可以話係一個整體，即係我哋制度上嘅一個缺失，就係一個我哋叫 collective mindset，一個整體嘅心態，大家都有一個心態係要去留意某一樣嘅嘢。當然我哋可以話其實即係如果政治嘅層面，我哋可以話「我唔理你係咪以前嘅人積落嘅一套嘢喇，你坐得而家呢個位，咁而家負責呢個位嘅人就有政治嘅責任。」但係問題就係話，委員會唔係負責呢啲所謂政治責任嘅嘢。所以究竟現任嘅主管，佢有咩嘢政治嘅舉措，呢個唔在委員會嘅考慮範圍之內。其實我諗睇完 Professor Fawell 嘅報告，同埋我哋嘅陳詞之後，其實我哋都可以知道就係話即係個問題唔係在於某一、兩個人睇漏嘢，而係在於制度上，整體心態上嘅一個問題，一個所謂 collective mindset，工作嘅 culture 嘅問題。Professor Fawell 都話過，係有一個 overarching 嘅 consideration 係要考慮「啊，原來係公眾健康呢個層面係需要突顯出嚟考慮。」

喺呢啲開場嘅論述之後，我諗我而家就要講講幾個即係比較 specific 啲嘅課題，第一，就係關於認知不足呢一個概念。認知不足呢個概念就王律師同埋何律師都有提過，水務署喺個陳詞裏面，就第 36 段就有所謂四個層次嘅認知，或者認知不足，但係我就即係傾向於就係同意頭先何律師所講嘅，我哋毋須要即係將個事情係整到咁複雜。第一個層次，就係知道乜，唔知道乜；第二個層次，就係唔知乜，唔知乜。其實個問題就係，我哋而家唔係話水務署同埋房委係唔知道鉛係潛在地係對健康係有問題，水務署係知嘅。房委佢都知道鉛係有問題，當年草擬呢個合約嘅時候，有心人直情係識得將唔可以含鉛呢一樣嘢，由呢個 obscure 嘅一個 table 6 裏面嘅 noted 特登直情抽出嚟寫埋喺個合約嗰度。所以兩個公營嘅機構或者部門係有人知嘅，如果唔係，都唔會寫落去，亦都唔會有個叫做即係針對話要世衛--要 patch，要符合世衛呢個嘅 guideline。呢個 guideline 呢個 patch 究竟嗰個 basis 啱定錯，我哋遲啲會商榷。

咁個問題出在乜嘢呢？就係佢唔係唔知道鉛嘅傷害，所以呢度未必可以用認知呢個字。我諗缺少嘅係咩嘢呢？缺少嘅就唔好話用 awareness 呢個字，因為英文就叫做“lack of awareness”。我諗如果你畀我用英文講，就係“lack of sense of alertness to the risk that people would break the rule”。即係話對呢個人係會違規地使用含鉛嘅焊料呢一個風險係缺乏警覺，你可以話呢個係文字嘅分別，即係唔--認知同埋警覺。認知，係對一個事實嘅認知，鉛有害佢唔係冇認知，佢有認知。但係佢對呢個--而佢亦都有認知到，佢知道有呢個 prohibition，所以佢唔係唔知有一個 prohibition，佢知嘅。但係就係佢對呢個人會有 prohibition，

有禁止之下仍然會違規呢一個風險，就欠缺一個警覺性，太過可以話係 take for grant，太過覺得就係話「我禁咗，我就預咗你啲人呢係會去做㗎嘞。」

加上就係--呢個就係 Professor Fawell 提出嘅，就係對呢個一啲條文一啲要求，佢背後嘅理念，嘅 rationale，就缺乏呢個認知。所以舉個例，就係佢哋會知道有個 rule 喺度，就係話唔可以用含鉛嘅焊料。但係在一啲所謂技術官員，佢哋日日見住一啲十萬八千個合約嘅條款，佢哋好容易--佢哋即係諗嘢，佢哋睇嘢，就會 the mind get numbed，我哋會話，佢哋見住咁多嘅條款，佢哋覺得呢個條款 click the boxes。佢哋唔會突然間會 click 到，click 就係話呢樣嘢原來係同公眾衛生係有關，佢哋好多時候會知其然而不知其所以然。佢哋會知，「啊，係有一個咁嘅禁止」，咁咪有個咁嘅禁止，但係佢哋唔知道原來呢個禁止個背後嘅理念係同公眾嘅健康有關。而即係引致到就係頭先主席都有提過，就係話「如果我知道佢背後原來同公眾健康有關，而嗰個後果係會咁大嘅話」，咁對佢哋喺 monitoring 呢一個整個即係制度嘅時候，係一定係會有影響嘅。如果佢覺得「哦，純粹一個條文啫，咁條文流水作業都係咁做㗎喇。」呢一種嘅心態係喺某個程度上係會即係對今次整個事件嘅發生，係有一個 contribution 嘅出現。

水務署喺佢嘅陳詞裏面，係曾經就係提到過 Professor Fawell 佢嘅證供其中有一段，咁我諗委員會其實都記得頗清楚，就係關於嗰個 spectacularly--有個 spectacular degree of foresight 嗰段嘅證供。咁嗰段證供就後來我亦都係喺呢個補問嘅時候，我就亦都有問過 Professor Fawell。水務署喺佢嘅陳詞，我唔會再即係請委員會即係擺番嗰段出嚟，水務署嘅陳詞係第 10 段。但係 Professor Fawell 喺嗰一段嘅證供，我後來補問嘅時候澄清咗就係，佢所講話--因為其實佢嗰段證供嘅意思，就係話如果你喺到到最後，喺水喉嗰 part 起完之後，走去仲要求水務署走去驗，就似乎係即係太過要求水務署好似有啲 20/20 vision, 20/20 hindsight 咁樣。但係嗰段 Professor Fawell 嘅意思就係話，係針對要求水務署喺最後 final inspection 驗個水喉出啲水。

但係 Professor Fawell 亦都講得好清楚就係話，咁佢嗰 part 嘅意見唔係指喺開頭嘅時候，control 究竟用咗啲咩嘢物料。因為 Professor Fawell 講得好清楚就係話--其實水務署自己都係咁講，就係話操--即係管控呢啲嘢，其實最重要就係喺開頭管控啲咩嘢物料用，好過用完之後，到到最遲先至去 check。因為到到最後先至 check 嘅時候，可能已經太遲，嗰個成本可能已經太大。但係個問

題就係話，你個假設就係話你開頭管控用咩嘢物料係成功嘅，或者有效率嘅，如果你開頭管控用咩嘢物料嗰 part 係有漏動，有甩漏，或者有不足嘅地方嘅話，咁你即係整個假設就已經係唔係太過成立㗎嘞。

我哋即係呢一個咁樣嘅陳述，其實 to some extent 都係即係可以合用喺房委嗰度，可以合用喺房委嗰度。就無論我哋講緊究竟係建築方面去驗樓，定係水務方面，去到最後要出 1005，或者你去 inspect，係你簽最後 part V of 呢個 WWO46 嘅時候，都有--即係水務署都要驗。即係無論兩者都係靠最後去驗先至驗到出嚟，喺行政上可能雙方都會覺得就係話可能會太遲，要監控係一早物料嘅時候監控。

講開頭監控，其實兩個公營嘅部門，或者係組織，其實佢都有自己嘅機會，即係其實有幾個機會。咁比較明顯嘅機會，水務署當然就係 WWO46，填張 form 嘅時候。Housing, HA 就係我哋話 form 6210，呢個當然唔係唯一嘅方法，呢兩個例子我擺出嚟講，就係因為呢兩個係現成佢哋有嘅一啲既有嘅程序，我哋見到，既然有呢兩個情況，其實你俾埋 soldering material 落去，其實唔係做唔到嘅呢樣嘢。當然而家我哋睇番轉頭，佢哋而家直情就係即係改變咗個制度，但係我哋睇番轉頭，就係話而家唔係話要佢哋係作一個新嘅制度出嚟，原來我哋而家發現就係一啲現成嘅一啲 form，一啲制度都係已經可以 accommodate 到呢一啲嘅關於焊料嘅嘢。譬如話 WWO46，當日如果一早填咗，話「啊，我係用 FRY 嘅，我用無鉛焊料。」呢樣嘢係會即刻係提升到各人嘅警覺。如果喺 6210，送嘢去到地盤要即場驗係乜嘢嘅時候，你一驗到，原來係 FRY 嘅時候，可能已經有好多個唔同嘅機會--呢啲已經係唔同嘅機會係可以防止到今次嘅事情去發生。

所以呢一啲我哋叫做係一啲嘅 missed opportunities。但係點解會大家會 miss 咗呢個 opportunities，就正正係因為原來大家都係--水務署同埋房委大家都喺證人台裏面，都曾經係解釋過點解佢制訂 WWO46 或者 6210 嘅時候係冇擺到焊料落去，大家都講咗自己嘅理由，房委開頭就講到其實好多時候係 risk base，以前發生嘅事，咁就可能加一件落去。水務署，最後我哋聽到，就係即係以 functionality，漏水或者係咪嗷水作為一個咁樣嘅理由。即係佢當然有佢自己嘅理由，但係而家我哋睇番，係咪過於狹隘？呢個就係所謂 ought to have。我哋而家就唔係話有一張 form 叫你 check solder，你有 check 到，唔係，而家問題係高一個層次嘅嘢，就係 day 1，你 ought to have put this into 嗰個 form。其實你諗真啲，你而家望番就係話其實真係有乜需要咁狹隘，淨係講 functional 嘅嘢，或者有乜需要純粹就係講話發生咗事情之後，

「啊，有事發生過，我就加多一件落去」咁樣。即係呢一個就係我哋嗰方嘅一個意見，就係話就住 Professor Fawell 所講話，對呢個 health 呢個 problem 最有效嘅方法，就係喺開頭監控究竟用咩嘢物料，佢話現成其實之前係已經有，係睇咗嗰步嘅啫，就係呢一啲現成嘅 form。

我第二個題目要講嘅，就係--關於房委，咁當然就係我哋話係另外其實有一個 opportunity，就係喺 2002 年即係改變，即係話容許呢個 copper pipe, copper pipe 去--即係容許公營房屋興建嘅時候，係容許用銅喉。嗰陣時佢哋考慮嘅時候，就其實亦都係有一個機會係畀房委去針對呢個焊料呢樣嘢係做多一啲嘅工夫。當然房委當日係有 spot 到呢個要針對焊料含鉛呢樣嘢，係作出更加嘅譬如話合約嘅規定，或者係啲 testing 方面需要更多嘅要求，呢一個當然亦都係我哋所講嗰個心態嘅問題，一個心態嘅問題。我哋未必係可以怪一、兩個嘅官員，「點解你零零舍舍寫落去？」因為如果佢哋呢個心態嘅環境裏面工作，佢可能都以一隊足球員咁樣，你嗰個教練不斷同你講就係話「你淨係睇波，你唔好 mark 人」嘅話，咁佢--你哋有--即係可能話未必可以怪一個球員，呢個完全係積落嘅一種文化，一種 mindset。

另外一度我想而家開始講嘅，就係關於嗰個驗水，sampling protocol，呢一個就係到到聆研嘅後期，就大家都比較即係重視嘅一點。水務署、苦主嘅聯盟，佢哋雙方都已經係入咗好多嘅陳詞，咁我哋亦都喺提問嘅時候，同埋我哋嘅書面陳詞都講咗好多，咁同埋呢一 part，就委員會亦都問咗好多嘅問題，我就其實毋須要再去重複所有講嘅嘢，但係我就有一、兩點係比較相對仲有爭議性嘅，我就想講一講。

第一，就係關於陰謀論嘅問題。陰謀論有幾個層次嘅，陰謀論籠統地講，李大律師提出，就係會唔會係政府想即係降溫，減低嗰個恐慌，特登做到個數細啲呢咁樣。首先就係，開始嘅時候，水務署喺九十年代，佢有一個 patch，就係跟隨 WHO 嗰陣時嗰個 guideline，就係嗰陣時係 10。我哋相信，或者我哋即係提出嘅一個陳詞就係話，當日選擇 10 呢一個位作為一個界線，九十年代中嘅時候，就唔係出於任何嘅陰謀論，嗰陣時有鉛水事件，所以佢唔會話嗰陣時有咁嘅遠見，知道有鉛水事件，所以我用 10。開頭佢用 10，可能當時有佢嘅理由，因為嗰陣時係九十年代中。

主席：你講水務署咩嘢？



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C

石先生：水務署。

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主席：佢 wholesale incorporation 嘅啫。

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石先生：係。

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主席：係。

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石先生：佢嗰陣時係接洽。

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主席：係。

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I

石先生：嗰陣時佢對嗰個 guideline value 嘅理解，係基於嗰陣時嘅版本...

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主席：係。

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石先生：...嘅 WHO value，後來我哋演變咗，guideline value 變咗 provisional guideline value。但係我哋講番，即係盤古初開佢 patch 嘅時候，嗰陣時就唔會係任何嘅陰謀論，係特登要嚟整高個數，你可以話佢係太過搬字過紙，呢個係另外一個問題。

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好嘞，比較即係嚴重啲嘅陰謀論嘅指控，或者係比較確切啲嘅指控，李大律師，佢就係話係關於呢個 sampling protocol，佢而家係水務署係當日，當日佢開始嘅時候，佢係好緊急嘅情況之下。我相信就提問嘅時候，尋日 Mr Pennicott 唔喺度喇，但係佢尋日都同我--即係提醒我就係話，當日即係事情發生係好緊急嘅情況之下，係水務署係被要求去協助係提供驗水嘅一個工作。所以其實當日水務署被要求走去驗水，其實就即係在情在理，就未必真係有時間即刻話走去「啊，我哋不如特登整個 least damaging 嘅 protocol，不如就係驗啲 flush sample 嘞。」水務署都係攞住佢嗰本嘅版子，咁就走去就話「啊，驗 flush sample 喇」咁樣。

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但係李大律師我諗比較尖銳啲嘅指控，就係話到到而家好多方面嘅意見，我哋知道原來係聆訊期間，我哋而家聽到原來陳漢輝博士好早已經提醒咗水務署，就係話「就算你有自己嘅 rationale，跟 ISO 某一個嘅演繹都好，而家外面啲人咁講嘞，不如你照做喇，否則啲人會話你係咪冚埋冚埋。」我哋而家至知道原來係咁樣講過。或者李大律師經常都話「喂，咁有個 joint preliminary report 寫埋出嚟，點解水務署--你 day 1，你跟咗你嗰個 manual，事發突然，唔算。但係而家事後之後，點解水務署係仲堅持係唔驗頭浸水呢？」李

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大律師就係用呢一個嘅理據，就係話呢係咪--會唔會係特登一個高層次嘅決定，係特登係去不聞不問，唔想知道一啲 inconvenient truths。無可否認，呢一種嘅表面上有人有呢一種嘅諗法，一種所謂 conspiracy theory 咁樣睇呢，尤其是而家嘅政治氛圍嚟講，就你唔可以怪佢哋。

同埋陳漢輝博士，我頭先都講過，我哋聆訊期間，陳博士佢之前都有咁嘅遠見，佢哋--即係我可以講番就係...

主席：8月26咁嘛。

石先生：係，佢有個會面裏面，陳博士係直情都係已經係警告過我哋，提點過佢哋啲嘍，主席記得喇。其實如果睇 transcript，就係2月29號嘅101至102頁咁樣，應該係。即係縱多嘅陳詞裏面，肯定有呢個 reference 係2月29號。

但係懷疑還懷疑，但係如果要即係作出一個咁樣嘅事實嘅論段嘅話，即係我哋就係覺得委員會係需要相當嘅小心，因為呢一個始終只不過係一個懷疑或者係推論，當然喇，好多人就會話「喂，你唔會 expect 政府搵人出嚟認嘍。」當然即係呢一樣嘢，任何呢啲嘅指控，都只能夠係靠推論，或者環境嘅證供。但係我哋睇過水務署佢哋個個嘅證人喺個證人台裏面畀過證供，我哋亦都有機會觀察過佢哋所講嘅嘢，或者佢哋嘅態度。

所以其實我會邀請，請求呢個調查委員會喺考慮李大律師作出呢一個咁嚴重嘅指控嘅時候，係同時考慮另外一個可能，即係話我哋陳詞裏面提出嘅一個可能，其實就唔係話--未必係一個高層次，係特登係要做低啲嘅價值，啲個 value，所以先至係堅持唔去驗頭浸水。我哋嘅陳詞裏面，所用嘅語言，就係話其實可能佢哋係一個 rigid and stubborn crisis management，同埋佢哋係 defensive，即係話係太過保護自己，或者係堅持自己一開頭 take 左嘅一個 position。呢一個其實好多時候都會發生，開始嘅時候，佢哋採納左某一個嘅立場，到到後來就發現呢個立場被挑戰，好多人都會係嘅，撐。加上就係，水務署，我哋見到好多嘅證人，佢哋好多時候係以啲即係技術嘅官員嘅態度或者 approach，去 approach 一樣嘢。咁有好處嘅，堅持自己嘅信念，真心，而家成日都講真心，真心維持自己嘅信念，所以佢可能係即係真心覺得話「技術上我對呢一個條文有個咁嘅演繹，我唔能夠因為你唔同意我，你哋唔識，變咗我識」咁樣。呢個係即係--你唔可以話咁樣諗法可能係大奸大惡，你可以話佢真心，但係你唔會話佢大奸大惡。但係個問題，就係有陣時--因為而家

我哋呢個研訊委員會，我哋睇嘅嘢係我哋係可以睇得闊啲，唔係真係純粹睇所謂技術上佢有冇技術嘅理由。

當然，調查委員會之前都聽過我哋嘅陳詞，就係話水務署堅持係驗 fully flushed sample，係基於對 ISO 某一個演繹，depends on 個 purpose。你 set 咗一個唔係咁恰當嘅 purpose，咁你自然得出嚟個 sampling protocol，就係唔係咁恰當嘅 sampling protocol 喇喇，當然呢一個可以係一個 legitimate difference in opinion。點寫佢，佢都繼續踩落去，可以係執迷不悟，可能係 stubborn，可能係固執，可能係科學家嘅固執。但係就係唔係就係委員會要接受，李大律師就話唔係嘅，點止固執咩，退咗休嘅技術官員點可以即係 dictate 到咩，係高層次啲嘅一個 conspiracy，呢一度就我哋係有保留，亦都係希望委員會喺接受李大律師嘅一個指控之前係三思。即係畢竟水務署其實可能佢哋對即係處理一啲咁樣比較政治化嘅事情，可能唔係經常都要處理，所以可能佢哋處理呢啲事情嘅時候，我唔知道佢哋內心諗乜嘢，但係可能佢哋其實未必係可以採取到一個即係比較宏觀，或者係即係對居民，或者一般人嘅憂慮，切身處地嘅諗法都未定。

當然另外一個可能，就係即係根據一般可能政府部門做嘢嘅方法，就會係佢哋採取任何嘅--即係改變佢任何嘅舉措或者盛，可能佢哋都要需要係 go through 好多內部要考慮，或者諸如此類。我哋見到好多時候、即係佢哋嘅官員喺個證人台裏面被質問，被盤問，話「你係咪即刻可以應承？你即刻將佢改變你驗水嘅方法。」佢哋好多時候都話「我哋要返去研究」諸如此類。咁你可以話佢呢啲會唔會太過官僚，太過死板呢，呢個係另外一個問題。但係係咪又係足以提升到係一個 conspiracy 嘅層次呢，呢一個又係另外一個問題。當然喇，委員會當然可以選擇喺佢哋嘅報告裏面，係作出一啲就 fully reasoned，係充滿理據嘅一啲推薦，到時就要睇下究竟水務署喺考慮完呢啲嘢之後作出咩嘢嘅回應，呢一個當然主席亦都喺聆訊期間曾經講過，即係委員會寫完出嚟之後，水務採納或者唔採納，後來嘅政治後果，佢點樣解畫，咁呢個係水務署佢要自己運用佢自己嘅政治智慧。

Professor Fawell 佢嘅證供就好詳細咁樣解釋過個個 10 個 microgram，世衛個個 provisional guideline value，個個點解會變咗 provisional，佢亦都解釋過，已經唔再係 health base 喇喇。咁呢一個當然就係同水務署一路個個似乎嘅理解係有啲分歧，Professor Fawell 係提出咗 5 microgram 呢一個嘅提議，你可以叫呢個做 action level，你可以任--你畀一個標籤呢個 5 個

microgram 呢個 level。水務署亦都係即係喺佢嘅陳詞度話，佢亦都會考慮 action level 呢一個概念，水務署喺陳詞都講過。

但係無論我哋係咪採納一個低啲嘅數值作為叫做 action level 都好，就算，就算係採納--就算我哋仍然係當水務署嗰個理解係咁嘅，都係當 10 microgram 係 health base 都好，我哋嘅陳詞都係認為，係單純用 flushed sample 嚟到去斷定究竟係咪符合呢一個 10 microgram，係未必係太過全面，或者未必係太過恰當。因為水務署佢話用 flush sample，佢嘅理據就話呢一個係一個叫做有代表性嘅 sample。因為 flush 完之後，就係代表一個 reasonable，或者一個 average 嘅 sample of 一個人嘅 consumption during the day。

但係我相信即係專家證人喺證人台裏面接受詢問嘅時候都講過，就係話其實有一個叫做 reasonable assumption as to 啲人係飲咩嘢水，呢個純粹係唔同嘅人，有唔同嘅習慣。所以其實水務署係即係唔應該就話「啊，我覺得合理嘅人，就係飲某段時間嘅水，所以呢我決定有冇風險呢，我就係用我 deem 咗某一種人就係合理嘅人，我淨係睇下呢一種人佢飲嘅水會唔會係有過量嘅 exposure。」專家證人，譬如 Professor Fawell 都曾經講過，就係話應該 present 一個 reasonable worst-case scenario，worst-case scenario 咪飲頭浸水，頭浸水你唔可以話 unreasonable，因為真係有人係飲頭浸水。同埋 Professor Fawell 都曾經講過，就係話「啊，你叫啲人話不如改變下你嘅生活習慣囉。」講就容易，事情過咗之後，好耐之後，啲人可能已經忘記咗呢個事情，佢哋又會回復番原先嘅習慣。所以純粹係靠叫人哋話「不如你開咗即係兩分至五分鐘之後喇，就要嚟話，所以其實我哋可以用 flushed sample。」呢一個邏輯係未必行得通。

另外有一個比較細啲嘅點，就係關於 enforcement，就我哋問水務署嘅林正文先生嘅時候都曾經即係問過，就係無論你用唔用 10 都好，就算你係驗出嚟得 5，或者 9，或者係七點幾，都係肯定因為個系統裏面係有用咗含鉛嘅部件，或者係 solder。同埋都肯定係一定違咗規㗎嘞，因為如果你全部都係 within British Standard 嘅話，就有理由有咁高，就算唔過 10 都好，咁佢都係同意。但係就引申咗一個問題，就係話喺 enforcement 方面，佢亦都係承認，而家水務署其實係裏面係未有一個 protocol 係去指引水務署當局係點樣去 enforce，用咗違規嘅焊料或者部件，佢話仲要返去諗。因為我當日我曾經問過佢就係話，水務署用乜嘢界線嚟決定係咪向某一啲嘅持牌水喉匠採取行動，佢就話嗰陣時佢哋就純粹就係用咗你係咪過

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咗 10，因為佢哋唯一有嘅 test 就係咪過咗 10 咋嘛。但係其實你唔過 10，都係可能係因為裏面用咗違規嘅料，咁佢同意，但係佢話因為可能係行政嘅原因，或者係總之佢哋一路嚟講，佢哋嘅 set 咗嘅 guideline 就係--佢哋唯一有嘅資料就係咪過 10。但係呢一度呢其實係值得去檢討，值得去檢視，因為我哋唔好理 10 呢一個係咪已經係 health base，你稍為過咗，你系統裏面有鉛都係唔應該㗎嘛，都係已經表示咗有人係用咗違規嘅焊料。

主席：因為佢哋 Consumer Services Branch 同 Water Science，根本就兩個完全唔同嘅。

石先生：係，咁所以 Consumer Services Branch 佢哋嘅 enforcement 唯一有嘅數據...

主席：就係得個 10。

石先生：……就係 10，就係 10，所以呢一度佢哋係要去檢討，或者係考慮。

另外一個今朝同埋尋日都有講過，今朝何大律師係特別 specifically 都有講過，就係關於嗰啲 discounted sample。Discounted sample，或者 discarded sample，就係嗰個事情發生呢，就係相對後期李行偉教授佢嗰個報告裏面就提出咗，其實係有一啲嘅樣本，係水務署做咗嘅樣本，就見到裏面其實係超咗標嘅，但係由於種種嘅理由，就呢一啲樣本搵到--發現嗰啲屋邨，就有歸納到成為 affected estate，咁後來就有新聞稿出咗嚟去解說。

由於個聆訊即係發生嗰個時序，由於我哋好多嘅 issue，好多嘅爭議點，好多嘅證據要處理，所以就關於究竟呢十一個 sample，佢裏面究竟每一個 sample 點樣選擇去 discarded 咗佢，而唔用，就我哋係有真係話逐個逐個 sample 咁樣話「唔該，你傳召證人去逐個逐個解釋」，所以我哋而家當然我哋係有新聞稿。但係呢一啲新聞稿，就我哋有係叫做話受到聆訊裏面嘅一啲所謂盤問，或者去 test 過，當然我哋今次嘅聆訊，亦都唔係話為咗要逐個逐個 sample 去 test 究竟你接納佢，或者唔接納佢係有冇理據，呢一啲比較 nitty-gritty 嘅嘢，其實唔係屬於調查委員會嘅職權範圍裏面，因為我哋要即係睇番個所謂 big picture。但係有一度係要留意，就係既然而家即係呢一個所謂 discarded sample 呢個問題係浮現咗，房委亦都係知道有需要去解釋嘅話，咁就只能夠係留待房委係向公眾作出更多嘅溝通。或者係聯同水務署去解釋係點解呢一啲嘅

sample，雖然開頭睇嚟係超咗標，但係都未能夠令佢哋係將呢一啲嘅屋邨係歸納成為 affected estate。因為呢一度係與公眾觀感有關，因為公眾觀感純粹見到個 number，就係「點解我嗰條邨過咗，你唔擺我落去？又係咪有陰謀論呢？」諸如此類，咁呢一個可能係就真係要睇兩個部門，佢哋又係講政治智慧，係如何能夠有效咁樣與公眾或者居民溝通，係解釋到畀佢哋聽點解嗰一啲嘅 sample 係唔代表佢哋所住嗰條邨係有事。呢一個我諗未必係我哋今次聆訊裏面可以喺證據上做到嘅嘢。

Section 15, Waterworks Ordinance, 係關於 licensed plumber 嗰個 point 嗰個正確嘅演繹。我哋嘅陳詞裏面，係有對呢一點係作出過陳述，218、221。但係呢一點其實喺兩面都係有即係可爭拗地方，字面上，就我睇咗王大律師對 section 15 嘅演繹，佢話其實唔使塞啲字入去，或者改變啲意思，佢話只要你喺 section 15 裏面，某一啲字眼，你用寬鬆啲嘅演繹，都可以包含到水務署佢哋嘅理解嗰個意思，呢一度其實有得商榷。因為字面上，其實即係我哋即係委員會大律師嘅團隊覺得都相對清楚，但係當然實際運作起嚟，我哋係完全理解就係話如果係事事都要求 licensed plumber 自己去做，係會引致好嚴重嘅問題。呢一個其實我哋嘅陳詞都講到，就係其實可能當時根本草擬嘅時候，冇人諗過而家即係呢一個嘅問題；或者好多時候，草擬嘅時候，可能大家係有一個不成文嘅一個假設，就話「啊，咁呀梗係可以 licensed plumber 唔係自己做，係搵人做㗎喇，係 supervise 咪得囉。」就有諗過佢嗰個 section 15 用嗰個字眼，原來係未必真係可以 cater for 呢一個咁樣嘅演繹，或者理解。

但係歸根究底，但係話番轉頭，就係我哋今次嘅調查委員會係未必有需要係對呢一個 section 15 嗰個正確法律嘅演繹係作出一個權威性嘅判斷。因為今次唔係一個所謂 enforcement action，今次唔係話要對某人違反 section 15，或者作出一個嘅檢控。咁嘅情況呢就要對 section 15 嘅正確理解，作出一個 definitely 嘅 ruling。但係呢我哋嘅聆訊嘅過程中，水務署都接受，就係話其實 section 15 嗰個字眼係唔理想，係需要去 revisit。我哋就係希望即係委員會係可以作出一個嘅 recommendation，就係話即係 section 15 個字眼，係需要急切地係澄清同埋寫得更好。因為否則嚟講嘅話，而家好多人係隨時 potentially 違緊規嘅，根據某一個演繹，而呢班人之所以有畀人告，係因為而家嘅水務署，或者一路嚟講嘅水務署，係對呢個 section 15 作出某一個演繹或者理解，所以佢就有作出一啲執法嘅行動。但係呢一個喺即係所謂一個法治社會裏面，其實就唔係太過理想，因為純粹係由於擁有公眾權益嘅人，對字

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眼嘅某一個理解，而唔採取一啲執法嘅行動。第二時改朝換代，某朝一日--我哋唔使上崗上線話政治打壓，但係純粹以法治嘅觀點嚟講，就係第二時如果有某一個嘅--即係另外人，有另外一個嘅理解，佢話「我揸正嚟做嘅時候」，好多人就會誤墮法網，呢個係唔係好理想嘅，所以就有需要係急切地去澄清 section 15 嘅字眼。如果水務署覺得佢有一個理解係可以用文字寫出嚟，佢可以成個 section 15 overhaul，呢個係完全係在佢嘅職權範圍裏面係可以做到，我希望委員會可以提出一啲 recommendation 係對呢一方面。

當然 section 15 呢一點就未必係真係直接導致到今次嘅事情發生，但係因為我哋嘅 terms of reference 裏面，係包含即係對整體、整個供水系統嘅要用呢一個係，即係絕對係委員會係可以提出。

主席：某程度上係有關，因為--我同意唔係直接有關，不過因為你記得就算佢哋 task force--我唔記得邊一個，好似係--唔係，首先 Prof Lee 有講過，就係話因為 workmanship 係其中一個導致今次嘅事件。另外，我如果有記錯，task force 嘅報告裏面都好似有講過話今次嘅事件係同 workmanship 有關。In 呢一個咁樣嘅 sense 呢，究竟邊一個人做，某程度上係有關。你話係咪直接有關，我同意未必係直接有關，因為老老實實，licensed plumbers 又可以做得差，skilled work...

石先生：大工--你因為而家法律規定大工係可以做㗎嘛。

主席：係，大...

石先生：水務署話大工直情話到明係可以做水喉。

主席：Exactly--唔係，大--即係你做得好、做得差，都可以有唔同嘅人做得好、做得差，不過個問題就係邊一個人原本係應該做嘅咁樣。所以喺呢一個咁樣嘅層面，其實你話如果 section 15 係完全冇關，我又唔同意。不過我可以同意你所講，去到呢一個層面，就係話你有一個好大概問題喺 section 15 裏面。

石先生：唔。就係即係需要急切地去澄清，同埋寫得好啲。

另外，有一點我需要講講嘅，就係關於--除咗焊料之外，其他部件潛在地會唔會都有釋出鉛，係引致到今次嘅含鉛量超標咁樣，瑞安同埋中國建築都有提出過呢一個嘅論點。尋日王大律師代表水務署陳詞嘅時候，佢亦都係提出咗一個論點，我都傾向於係同意嘅，就係話即係唔可能純粹喺實驗室裏面攞住兩個部件，一個就係一個 tap，或

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者一個我哋叫 fittings；另外就擺住一個 joint，就純粹--即係喺實驗室嘅環境裏面，純粹走去 measure 邊面 leach 得多啲。因為係完全同實際環境裏面接晒之後嗰個情況係唔同。

呢一個李行偉教授佢嘅 report 都講得好清楚，因為成個系統你接埋晒啲嘢之後，係一個好 dynamic 嘅一個情況嚟嘅，好多 randomness 喺度。同埋就李行偉教授佢嘅報告裏面，就亦都係提出過，就係佢之所以用嗰個 computational fluid dimension model，主席同埋委員都記得，就係正正就係，佢就係擺番每一個部件佢出嚟嗰個 leaching rate，fed 咗落去個 model 裏面，就係去 verify 番佢哋實際上 observe 到出嚟嘅一啲嘅結果。

所以就--即係李行偉教授同埋佢嘅報告裏面係亦都一段係針對個 task force。因為個 task force 嗰個報告裏面，其中有一段就正正就係擺住啲 individual 部件，佢哋嗰個 leaching，佢企圖用一啲數學嘅方法去計，就係佢哋嗰啲部件之間究竟邊一個係--唔係，部件同埋啲 solder 之間究竟邊一個係 leach 得多啲呢咁樣，李行偉教授對呢一個 task force 個報告裏面用咁樣嘅方法係有所保留。

同埋就係，李行偉教授佢亦都係同意就係話，其實瑞安同埋中國建築佢哋嘅陳詞，係企圖係話其實--即係當然佢提出呢兩個--即係呢個可能，可能係有背後第二啲嘅理由，但係即係佢提出話「啊，其實 soldering material 都唔係元兇，可能係有其他嘅部件都係元兇。」呢一個咁樣嘅結論，其實佢哋喺佢哋嘅陳詞裏面係有 address 到嗰個 isotopic analysis。因為其實 task force 佢其中一個支持佢哋嗰個結論嘅理據，就係有呢個 isotopic analysis。李行偉教授佢做嘅報告，佢亦都用過一個所謂 control sample，佢用咗一個係完全冇用含鉛焊料嘅一個 fact 係。

主席：相同部件，相同啲 valves 嗰啲去做咩嘍？

石先生：係。

主席：係，係。

石先生：嗰度佢做咗一個叫 control sample，嗰度係有事。

主席：係。

石先生：所以即係呢兩個，其實我哋客觀嚟講，以常理嚟講係相當強嘅證



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據嚟，就係話就算你其他嘅 valves，點都好，其實主要嗰個元兇，都係用咗一啲含鉛嘅 soldering material。

主席：係，其實 Prof Fawell 都有講過，呢一度。

石先生：係，嘍。我哋嘅陳詞裏面都有講過，所以我唔再即係重複。

主席：係。

石先生：另外，就係今朝早 Mr McCoy 佢有提過，就係關於驗重金屬，佢今朝提過 cadmium 呢一個問題。其實 Prof Fawell 佢喺佢嘅專家報告第 29 段，同埋第 83 段係都有提出過，就係話係佢會提議，就係即係水務署作出一個檢討，就係話喺驗金屬嘅時候，應該即係先--即係應該係 overhaul 下佢哋而家所謂去檢測重金屬，應該係檢測邊幾樣呢咁樣。Prof Fawell 嘅第 29 段同埋 83 段，就我係即係邀請呢個委員會去考慮，其中係包括咗 cadmium。

另外，就係有一啲關於 main contractors，主承建商，同埋一啲分判商佢哋扮演嘅角色，我哋有少少嘢想補充。

今次呢個所謂公開嘅聆訊，嗰個焦點，可能一方面就係一啲公營嘅機構，或者即係政府嘅部門，我哋即係委員會可能係睇一啲比較 big picture，喺政策上或者喺舉措上佢哋有啲咩嘢不足嘅地方。

至於 further down the line，我哋話至於實際上落手落腳做嗰啲，我哋當然唔會唔睇，但係即係可能喺比重上，喺比重上，咁就需要 go into details，需要仔細去考慮究竟邊個做咗乜嘢嘅需要，就有陣時係未必真係咁需要。因為喺呢一度，我哋想作出一個平衡，就係我哋都要--即係委員會應該知道，就係到頭來可能會有好多衍生出嚟嘅一啲民事嘅追訴，嘅民事嘅訴訟。某承建商可能會追訴一下個某承建商，就係話「你應該知道有啲嘢，或者你係實際知道有啲咩嘢嘢，或者你係特登做咗某啲嘢」諸如此類。如果當然委員會覺得係有需要喺呢啲嘅範疇作出一啲 specific 啲 findings 嘅話，當然委員會係應該做。

但係我哋要考慮，就係話我哋要考慮就係話我哋係睇呢個比較 big picture，究竟係咪需要每一個承建商，每一個分判商，佢哋每一個人所知道嘅嘢係知道幾多呢咁樣，有冇一個需要係好仔細每一個人 make 一個 findings。定係話委員會淨係需要講，就係話每一個 subcontractor 佢哋用錯嘅料嘅理由，都眾說紛紜，呢一個就突顯咗個 risk of 用錯料，其實係幾咁多，特登用嘅又有可能，基於無

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知嘅，又有可能。即係委員會淨係需要咁樣講，定係需要對每一個 contractor 都講得好清楚呢，呢一個我會留待委員會。

但係即係當然委員會喺決定係咪每一個 contractor 都 make 一啲好 detail 嘅 findings 嘅時候，我就會邀請即係委員會要考慮，就係話其實背後會有好多訴訟可能會提出嚟，而好多而家擺出嚟講嘅一啲指控，其實就可能係--我話係 with a view to 將來有可能嘅訴訟係要嚟鋪路。當然呢一個唔係一個唔 make findings 嘅原因，如果委員會覺得需要 make individual findings in detail, 咁就應該...

主席：但係啲 evidence 佢哋完全唔可以用㗎嘛。

石先生：Evidence?

主席：係。

石先生：係，係。當然即係心理上，當然即係佢哋可能會覺得話「委員會都幫我吓」咁樣。

主席：唔。

石先生：因為好多時候我哋會覺得就話--好多時候即係喺個委員會裏面提出嘅好問題，其實都...

主席：全部冇用嘅，呢度。

石先生：嘎。即係好多時候佢都會--即係大家可以隱約見到，其實佢哋係 eyes on the balls, the balls will come later。

主席：我明，我明，係。但係呢度預先聲明先，根據呢個專責委員會條例，係唔可以用㗎嘛，啲 evidence。

石先生：我而家就對主承建商，同埋一啲嘅分判商佢哋扮演嘅角色係有少少嘅補充。主承建商，其實剛才何大律師都有提過，就係其實佢哋喺合約上，當然就係要用合乎規格嘅一啲焊料。我哋嘅陳詞，136 至 141 段，就係針對 on the site。即係 check 焊料嘅程序需要做嘅嘢係作出咗陳述嘅，136 至 141 段。

就係基本上，即係長話短說，就係各大嘅 main contractor, 就佢哋其實都係某程度上係有一啲嘅 checking procedures, 係應用到落去呢啲物料嗰度。但係一係就係呢啲程序係冇跟足嚟做，或者

就係呢啲程序裏面嗰個有關嗰啲 form 或者嗰啲 checklist, 就有包到呢個焊料。所以亦都係講番, 就係話個 missed opportunities 係喺度。我哋係針對咗即係四個--即係數個呢個承建商, 我哋都有即係各自咁樣去講有關佢哋有一啲嘅 manuals、有一啲嘅 checklists。有啲係擺到明係有, 不過可能佢哋又有 check 到。

至於嗰啲分判商, 嗰啲 plumbing subcontractors。有一點關於呢啲 plumbing subcontractors, 係一路即係大家可能都好有興趣去諗, 就係會唔會係有一個慳錢嘅呢個誘因咁樣? 會唔會係明知故犯呢? 呢個種種嘅 plumbing subcontractors。我哋知道有幾個, 就何標記、金日、同埋係莫生、同埋蕭生佢哋。好籠統咁講, 就大家可能就話會唔會係因為用呢一種--用有鉛焊料係平啲, 所以大家就有一個 profit motive 咁樣, 佢哋係明知故犯嘅咁樣。

所有嘅水喉分判商都唔認嘅, 呢個當然。何標記就係話佢--佢嘅證據, 我哋有個表, 即係 summarize 咗。何標記, 基本何文標先生就話佢唔知道咩嘢含鉛、唔含鉛呢啲嘢。蕭生同莫生都係話唔知嘅。金日就係話--張達欽先生, 就話佢係知道有呢個要求, 係唔可以含鉛, 不過佢唔知道原來市面上係有一啲焊料係含鉛個嗰咁樣。好, 某個程度上, 大家可以--其中一個睇法, 就係話「你有理由唔知, 你又冇理由有錢都唔賺, 所以你一定係為咗嗰個 price differential, 先至去選擇係訂一啲含鉛嘅焊料。」但係呢一種咁樣嘅一刀切嘅方法--即係當然 profit motive 係一個可以嘅誘因, 我哋考慮證供嘅時候, 當然係要考慮呢個 profit motive。但係純粹因為呢個 profit motive, 就作出一個一刀切嘅事實嘅認定, 就話呢班人個個人都係為咗錢, 所以就係特登會走去用一啲平啲嘅含鉛焊料, 就會係略嫌有少少嘅粗疏。

因為我哋都唔能夠否認, 因為 Prof Fawell 佢自己嘅證供都話, 其實有好多人都同佢講, 即係你 "Many people can't tell leaded solder from unleaded solder"。同埋教育背景、工作經驗, 同埋即係人生經驗, 同埋工作習慣, 其實即係對每一個人嘅認知都可能係好唔同, 所以就真係唔能夠話一概而論, 好粗疏咁話「點會唔知, 一定係為咗慳錢。」

我哋即係抽空啲嚟睇, 就係用咗含鉛焊料呢樣嘢就有得賴, 冇得唔認。佢哋去抵賴, 當然, 即係佢哋去唔認話佢哋係明知故犯, 當然係其中一個誘因, 就係令到佢哋嗰個 blameworthiness 去減低。因為用錯咗焊料呢樣佢哋冇得唔認, 賺在就係特登定係唔小心。但係關於係特登同埋唔小心, 呢一個係取決於佢哋嗰個 state of

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knowledge。State of knowledge 呢樣嘢，即係佢究竟嗰個心態，佢知與唔知，呢樣嘢就--即係主席閣人都會知道，其實即係個人心裏面知道咩嘢嘢或者唔知咩嘢嘢，就其實好多時候即係頗難去作出一個即係認定。尤其是呢啲我哋叫做喺...

主席：我哋刑事嘅法官...

石先生：經常做。

主席：係，經常做個啲，係。

石先生：係，經常做。

主席：你哋啲民事嘅大律師...

石先生：民事都會做嘅，即係 state of mind is as much a state of matter of fact，係。

主席：我哋好決絕個啲，唔。

石先生：係。但係即係當然都要考慮證據，即係當然如果證據上 motive，係一個 profit motive，無可否認係一個 pointer，就係話常人冇得賺點解唔賺咩。

主席：唔係，你淨係講咗 price、profit，不過我就仲有一個，就係施工嘅快慢。

石先生：施工快慢，當然就係...

主席：係，可能係 combination。又可能係喺某啲 situation 係施工嘅快慢多過 profit，因為佢根本就唔 in a position 去擺到 profit。

石先生：唔。因為--on the other hand，當然就係另外有一啲，譬如話何文標先生，佢嘅證人供詞裏面就有講過，就話計番條數，其實未必真係用 unleaded solder，on average 你嗰個...

主席：即係佢哋每一個人都有佢哋嘅講法，justifications 又好。

石先生：係，每一個嘅講法。同埋佢擺一條數出嚟去計，咁又話其實唔係。因為主席都會記得，就話有啲人講，就話你唔好以為淨係 per unit 就好似平啲，因為佢會有 wastage，易熔啲，易熔啲就會嘅一啲，嘅

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一啲就會即係可能就 we need to wasted 咁樣，所以即係眾說紛紜。

主席：係。

石先生：同埋呢一啲關於 motive 嘅嘢，其實就頗難係去 test 到，即係有一方可以講出嚟，有 profit motive，或者快啲；另外一方又會講出嚟話，都唔係快得去邊；同埋施工嘅習慣，諸如此類，就呢個就係更加眾說紛紜。可能即係會有好多唔同嘅人出嚟講話「係咪方便咗啲呀？習慣上係會切咗嚟做，定係話可以成卷呀？」個個都有唔同嘅說法。呢一度就委員會係需要考慮，呢一啲種種唔同嘅說法。係咪真係比--係咪真係 clear cut 到一個地步，嗰個 motive 喺度。

另外，就係我哋需要考慮，就係因為我哋係有雋景方面提供咗嘅一啲單，我哋可以睇到每一個 contractor 佢哋負責嘅地盤，其實佢哋訂貨嗰個 pattern。如果真係有一個叫做 profit motive 嘅話，理論上，理論上如果一個老闆佢覺得訂 50 力，就梗係平啲，「我哋公司政策，就係全部訂 50 力。」咁冇理由即係有啲係訂咗 FRY。但係我哋而家不爭的事實，就係話有啲嘅 plumbing contractor，即係舉個例，何標記，甚至金日都有，甚至莫先生佢負責嘅屋邨，其實都有--即係有一啲嘅涉事嘅 plumbing subcontractor，佢哋係有訂過 a mixture of FRY，不含鉛焊料，同埋 50 力嘅含鉛焊料。

即係我哋常理嚟講，我哋有陣時要 test 下一啲嘅 propositions，就話如果佢一早立定志向係話「我哋貪平，全部 50 力。」點解佢哋會有啲係嚟咗 FRY 呢？當然呢度係引出咗好多嘅其他嘅 theories。其實佢會唔會係根本就係想訂 50 力，係要平嘢嘅，只不過就係因為 Prosperity 冇貨，所以先至抵咗佢，話「算喇，我畀兩卷 FRY 你喇」咁。但係呢一度當然係有一啲證據，Prosperity 就話「我唔會咁做。」有啲涉事嘅 plumbing subcontractors 亦都係講話「喂，唔會個啲。」

主席都記得，就係話負責採購嘅同事亦都話過，「喂，我嘅做法，就係話如果你冇貨，你會話畀我聽個啲，你唔可能無揸揸塞兩卷我有訂過嘅貨畀我。」當然，我哋可以比較 sceptical 咁樣去諗，就話「你梗係唔認嚟喇。」但係一個不爭的事實，就係話實際上真係有一啲有個 mixture，有啲 leaded、有啲 unleaded。

當然，亦都可能係有其他嘅考慮，其他嘅原因，可能就係話真係睇下嗰輪要快定係要慢；又或者睇下即係嗰輪--亦都有一啲第三種原

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因，第三種原因就係話，其實可能啲人真係完全闊佬懶理嘅，即係諗到乜就即係講乜嘅。

種種呢啲嘅原因，都係要攞埋落去嗰個大熔爐裏面，一個 melting pot，就係去考慮究竟係咪又有一個特登明知故犯，係由於 profit motive，或者係由於種種即係唔正當嘅原因。係明知道含鉛焊料係唔應該用，但係我都係由於一啲快或者時間嘅影響，係令我係即係鋌而走險，係去做一啲違規嘅事情咁樣。

如果逐個逐個 contractor 去睇，何標記，何標記係負責啟晴同埋葵聯。我頭先都講過，何標記我哋睇番 Prosperity 嗰啲單，佢係有摳雜到有啲 FRY、有啲係 50 力。何標記提出咗佢自己嘅解釋，就係話其實係陳小華提議佢咁用。

何標記有個特別嘅地方，就係何標記，我哋有個叫做 control sample。何標記我哋知道佢喺水泉澳邨--何標記嗰啲 purchase order 就有晒，我哋作出咗陳詞就係話--有少少 suspicious，就話「點解你電腦嗰啲 soft copy 都有晒？」但係我哋撇除嗰個唔好理，何標記係有一啲實在我哋係見到，原來佢做水泉澳，佢真係有即係訂不含鉛 unleaded 嘅 solder。

呢一個係事前--即係呢個係所謂爆出呢個鉛水事件之前，又唔似係事後補獲整出嚟嘅呢一個係，真係 contemporaneous 何標記真係有訂 unleaded solder。呢一點即係我哋話 in favour，何標記就係話都--即係你懷疑還懷疑，但係佢又唔似真係話何老闆一刀切，話「唔該你哋全部都同我訂一啲慳錢嘅 leaded solder。」

主席：去到邊個層面？去到邊個層面？

石先生：呢個就係牽涉 speculation。

主席：係。

石先生：因為我哋如果要背後，諗好多可能出嚟可以都得。

主席：唔係，唔係，唔係，譬如佢--譬如，譬如咋吓。

石先生：唔。

主席：佢啟晴邨，因為佢好特別，因為佢--你知道佢將嗰幾棟樓，...

石先生：嗰啲判法，嗰啲判出去嗰度。

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主席：係，嗰啲判法，判出去係唔同。

C

D

石先生：嗰啲判出去。

D

E

主席：咁又有牽涉到一個陳小華，跟住又牽涉到陳小華搵另外一個人去負責。

E

F

石先生：佢判出去，係。

F

G

黎先生：有獎金制度。

G

H

主席：仲有獎金制度。

H

I

石先生：係。

I

J

主席：係咪？

J

K

石先生：但係話時話，我諗我哋嗰個陳述應該都有講過，...

K

L

石先生：...因為呢個判出去畀人哋，佢哋其中兩 block。

L

M

主席：係。

M

N

石先生：但係我哋睇落，即係受影響嗰個 block，又未必係局限於係陳小華判出去。

N

O

主席：啱，因為跟住...

O

P

石先生：當然我哋可以諗下會唔會係陳小華 order 番嚟嗰啲畀人哋攞咗去第二個 block 用呢咁樣。

P

Q

主席：因為黃貴雄又話我又學吓嘛。

Q

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石先生：但係呢一度凡此總總，其實係引伸到好多個可能嘅理論。但係即係我所強調嘅就係，即係喺一個事實嘅認定裏面，即係有咁多個可能，即係 conspiracy theories，因為判--有個...

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主席：呢啲唔係--我唔覺得呢啲係 conspiracy theories。去到呢一個層面，我淨係講呢一個層面。呢啲就係 matter of--當然，尤其是你喺去到呢啲咁樣嘅 case，呢啲就係你究竟有幾多係 primary

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facts，有幾多係 inferences。呢啲就係究竟你 pre 唔 prepare 喺呢啲 primary facts 裏面 draw 一啲 inferences。

C

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所以呢啲唔係 purely speculation，我哋亦都唔會純粹係 speculate，我哋會--如果我哋會作出啲裁決嘅話，就一定會係 based on 一啲我哋 accepted 嘅 facts，而喺呢啲 accepted facts 裏面，我哋會 draw 一啲我哋認為合理嘅 inferences。

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不過我哋會 bare in mind。不過亦都要 bear in mind 呢個係一個 enquiry，嗰個 standard 唔係 beyond reasonable doubt。

G

H

H

石先生：唔係 beyond reasonable doubt。即係我頭先都講過就係話即係有人會認，所以...

I

I

主席：Exactly。

J

J

石先生：...呢啲情況之下就一定要係靠 inferences，呢個係無可置疑。至於已經受認定嘅基本事實，係咪足夠可以 sustain 到一個進一步嘅推論，呢一個當然即係委員會要...

K

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主席：Matter for us。

M

M

石先生：...即係採取嘅就係 common sense，即係人性嘅嘢，即係當然 profit motive 呢樣嘢永遠都係一個 positive motivation 嚟嘅。

N

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主席：尤其是喺一個商業社會裏面添。

P

P

石先生：即係錢係最實際，呢個我一開始開章明義就話即係呢個錢係最實際好多時候。

Q

Q

主席：係，啱。

R

R

石先生：但係即係都要考慮一啲即係其他嘅因素。當然，即係頭先我所講嘅就係話何標記佢有其他嘅 project 係採用咗唔含鉛焊料，呢一個可能係--就係顯示到係有一個 overriding 嘅所謂政策決定，係話何老闆話明全部唔該同我訂 50 力。

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但係至於下面會唔會各施各法咁樣，當然即係我頭先第一時間都知道係--當然，判出去嗰 part，會唔會係有呢個 rule 去畀負責落訂嘅同事喺嗰度--因為何老闆唔係自己落訂。至於會唔會有足夠嘅位

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畀下面真係負責落單訂嘢嘅同事，佢喺嗰度我哋叫做係--即係講得俗啲就係「做手腳」，或者係訂一啲違規嘅焊料呢，呢一個--即係證據上我哋係用咗好多嘅時間去研究。

即係委員會--當然頭先即係我哋亦都講到，即係委員會都係記得嗰一 part 嘅證據，關於即係其中有兩 block 係判咗出去嗰 part。

到到 Golden Day，Golden Day 嗰度就即係有個 twist，當然我哋知道就係有所謂事後做呢個虛構文件嗰個--即係 signer 嗰個 chapter。嗰個就唔係 causative，因為嗰個係事後，我哋可以話係補救整出嚟。

即係話有冇呢一個 forgery，佢用咗呢個含鉛焊料呢個事實都係會存在。至於就係話呢個 forgery，究竟呢個--即係 forgery 有幾個 angles，即係委員會需要考慮。

第一，究竟呢個 forgery 係咪就係好似林女士所講咁嘅版本，佢係受到翁先生嘅提示或者指使去做，定係有一個 wider-scale 嘅 forgery，同埋點解有呢件咁嘅事咁樣。

即係其實唯一出嚟認咗嘅就係林女士；翁先生就唔認，老細就唔喺香港。林女士佢作供嘅時候，其實佢所講佢點樣去 commit 呢個 forgery，我哋嘅即係證供，就其實--即係我哋嘅陳詞都有提出過，就係其實即係語言不詳嘅講得，即係令人哋懷疑其實係咪佢做嘅添，in the first place。即係佢講到點樣去 force，其實都講到唔係好清楚。

但係即係懷疑就歸懷疑，但係即係始終嚟講就係究竟有冇足夠嘅論述去作出一個 findings 係邊個去做咗乜嘢嘢，而嗰個背後嘅誘因係乜嘢。呢一度就有些少含糊嘅地方，因為至多你就唔信林女士，即係即係證據學上就話即係你可以唔信某個人，但係如果你唔信某個人嘅話，你就唔可以憑你唔信某人去證明到一啲相反嘅事情。

主席：唔係，我明白你講咩嘢。當然你考慮呢啲嘢嘅時候，你當然要考慮晒所有嘅 circumstances，係咪？譬如好簡單，當然你一個--我哋成日都係咁樣樣畀 direction of--畀啲 jury，你一個證人上嚟，你唔使信晒佢全部，你可以信佢一部分，唔信佢一部分，係咪？

石先生：係。

主席：佢呢一部分講大話，唔等如佢另外一部分講大話。

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石先生：因為講大話又唔同原因。

C

D

主席：Exactly。即係你返屋企問你個女做晒功課，食咗飯未。咁佢食咗飯係真嘅，做晒功課係假㗎嘛，係咪，可以㗎嘛。

D

E

石先生：但係佢話做晒功課，唔得如佢--影響佢講大話嗰 part 真定假。

E

F

主席：Exactly。

F

G

石先生：因為可能佢某槪嘢講大話，係為咗 cover up 另外一啲嘢。

G

H

主席：冇錯，係咪？啱唔啱呀？Objectively，係咪--objectively 嗰啲單位 forge 嘅就已經係有人 dispute，係咪？

H

I

石先生：係。

I

J

主席：個問題就係--好嘞，個問題而家就係究竟係咪佢自--譬如你其中一個 issue，就究竟係咪佢自己親手去做 forgery 嘅呢？你就話 on the basis of 佢自己都唔知道佢自己做咩嘢，cut and paste 佢都自己講到亂晒籠。

J

K

K

L

跟住你就可能要諗，當時寫字樓裏面究竟有幾多個人喺度呢？實際上得兩個人，係咪？如果唔係佢做，佢講到咁騎呢，會唔會係佢叫另外一個人做呢？

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石先生：或者啲 unidentified 嘅同事做，或者甚至擺番屋企叫啲識電腦嘅人做，係。

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主席：我哋--嗰啲呢就會係有少少 speculation，因為我哋知道跟住做完咗之後就點樣樣，就跟住擺咗喺度，跟住有人番嚟擺，係咪？

P

Q

石先生：擺咗去保華。

Q

R

主席：諸如此類咁樣樣，係咪？嗰啲我哋唔會--嗰啲有 primary facts 去 support 嗰啲我哋就唔會 speculate。不過我哋如果 draw inference 就一定係 draw 一啲我哋 accept 咗嘅 primary facts。Accept 咗嘅 primary facts，佢成間公司都係得幾個人，老細唔喺度，另外嗰個翁先生去咗開會。

R

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石先生：Send e-mail 嗰位 Patrick。

T

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主席：我唔講，總之剩番基本上得兩個人喺 office，唔。如果唔係林小

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姐做，...

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石先生：當然即係委員會就要考慮，就係話 for the purpose of the Inquiry，即係可以好明顯就係話肯定係金日裏面有人整出嚟。

D

E

主席：係，係。

E

F

石先生：至於係咪張先生指使，定係邊一個指使，定係有人 stuck their neck out，無端端走去自把自為咁呢？

F

G

主席：跟住你就--跟住你可能要考慮嘅就係林女士就係翁先生指使嘅，究竟會唔會再上一個層次去到張先生指使呢？呢度究竟有幾多證據去技持呢，可能未必有足夠嘅證據支持，呢個又係另外一件事。

G

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石先生：係。即係金日裏面係有人指使或者決定做咗呢一個假嘅出嚟，引致到其實個 relevance 係乜嘢呢咁樣？其實個 relevance 就係話要做假都係要嚟掩蓋啲嘢啫。

I

J

J

K

主席：喎。

K

L

石先生：做假出嚟掩蓋乜嘢呢，呢度其實有兩個層次。

L

M

主席：喎。

M

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石先生：林小姐自己講，或者即係當然金日佢想--即係我哋接受可能就係話其實--因為金日嘅證供一路都係話呢，其實佢哋一路都唔知道原來用緊唔合規格嘅焊料嘅。

N

O

主席：係，係。

O

P

石先生：所以金日嘅即係理論就係話，佢係直至到去年同保華開會，就保華嘈，佢先至返到去發現原來「哎咗，你快啲」--林小姐就話「你--阿翁先生就話唔該你快啲整番啲即係呢個寫住無鉛嘅畀我喇」咁樣。係因為保華開完會，佢先至知道「哎咗，原來我哋一路用錯咗嘢」。

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當然另外一個 sinister 啲嘅一個推論，就話其實佢哋一路都知嘅，所以先至呢個係欲蓋彌彰咁樣。至於--即係所以嗰個所謂 forgery 個因由，嗰個 relevance 就係即係在於究竟嗰個誘因係乜嘢。

R

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主席：喎。你當然呢個係其中之一個--一個 circumstances，你仲要考慮晒其他所有嘅嘢先至去作決定。不過，in any event，in any

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event，呢啲都係--如果要 pursue 嘅都唔係我哋嘅職權範圍，係咪？。

石先生：當然，當然唔係。即係所以我一路就係話即係委員會要考慮喺呢一啲嘅所謂比較 minute 嘅 details 裏面，係作唔作出一啲比較 specific 嘅事實嘅認定嘅時候，委員會可能要考慮就係話--即係委員會嘅報告究竟係諗住用一個比較 big picture 嘅形式，定係真係諗住係比較 detail 嘅事實佢都要抽絲剝繭埋。

因為--即係當然頭先我哋講到就 Golden Day，當然可能有一個誘因，就係搞到 forgery，仲唔係欲蓋彌彰咁樣。

但係另外一方面就係 Golden Day 嗰方面我哋--其實我哋嘅陳詞 footnote 16 裏面，我哋都有提到就係其實 Golden Day 佢負責嘅項目裏面，其實都有一啲嘅項目係用咗 mixture of FRY 同埋 50 力。亦都可以即係證明到就係 FRY--即係 Golden Day 本身其實亦都唔係話即係一刀切，就係話我哋不如全部都訂 50 力喇咁樣。

當然即係 FRY--即係呢個當然係其中一個即係要考慮嘅地方，係咪？即係我哋要 put everything in balance。即係 profit motive 點都會有，but on the other hand，就係話如果有 profit motive，點解佢又會呢啲咁嘅情況。當然 Golden Day 獨立--即係 Golden Day 本身考慮就話佢又有 forgery 呢一個 incident，但係 forgery 亦都可能係有幾個原因，呢啲全部即係當然委員會，尤其是即係主席...

主席：你當然都會考慮埋點解會一間公司完全冇單冇據呢，即係你--你記得嗎？完全冇單冇據，乜都有晒。

石先生：係，係。當然，即係呢一啲就係即係委員會當然係要即係應用一般所謂即係事實認定嘅一般，所謂 conventional 嘅技巧。因為其實即係委員會到到最終可能有個 checklist，就係話 primary facts 係乜嘢，到時委員會就要即係喺呢啲 primary facts 採取--即係譬如用一個 jury question 嘅形式就係話，我哋係 jury，我哋會唔會去即係 draw 一個咁嘅 inference 呢，咁樣。唔使 beyond reasonable doubt，呢個我可以理解。

主席：唔使 beyond reasonable doubt，只不過你 more serious 嘅 allegation，你就要 more cogent the evidence，係咪？

石先生：係，呢個係即係 Lord Nicholls, Re H 嗰個案例，主席都應

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該知道。

主席：係，係，唔。

石先生：不過我哋冇提供到，因為我哋係假設即係委員會當然係會知道...

主席：我知，知道。

石先生：...即係就算係民事嘅案裏面，都即係 the more serious the allegation, the more cogent the evidence。

主席：係，即使--不過，呢度另外一樣嘢就係譬如你好簡單，當然我睇咗保華嘅 conspiracy to defraud 嘅--佢 list out 晒所有嘢--嗰啲 elements 出嚟，就話咁樣樣 amounts to conspiracy to defraud，諸如此類。

石先生：係，唔。

主席：不過，其中有一樣嘢就係 respect of public authorities，你唔需要一定--當然 conspiracy to defraud 即係 conspiracy to practice a fraud。如果你純粹睇 fraud 嘅--即係 in criminal context，fraud 就一定係講緊錢，或者即係--但係 conspiracy to defraud 呢個 common-law offence 嘅 public authority 可以係 defraud public authority 去做一啲佢哋唔做嘅嘢，...

石先生：做某一啲嘢，唔。

主席：...或者佢哋唔做一啲佢哋應該做嘅嘢，佢哋嘅 duties。In 呢一個 sense，如果你明知道嗰啲嘢係會交去畀譬如房署睇，某程度上可能唔需要考慮 profit 添，即係如果純粹係 on 嗰一個 incident。

石先生：係。咁但係有冇需要喺呢個委員會個報告裏面去寫係另外一個問題。

主席：咁另外一件事，係。

石先生：因為呢個即係我哋永遠都要記住就係話將來可能有第二啲嘅 repercussions。

主席：啱。

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石先生：即係保華之所以喺裏面寫出嚟，可能都係 with an eye on，即係話如果而家可以...

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主席：呢個我唔理佢嘞。

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石先生：係。China State--當然剩番有兩個即係相對少啲嘅 plumbing contractors，蕭先生同埋黃先生。

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主席：係。

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石先生：即係比較戲劇性啲嘅場面，即係譬如話有張相擺到出嚟，我諗呢個委員都歷歷在目。

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主席：係。

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石先生：嗰度就應該係蕭先生即係譬如話擺張相出嚟見到原來佢着住同一件衫嗰度。呢一度即係事實嘅認定，佢哋就應該係知道 approved 咗嘅係咩嘢 sample，一卷卷嘅 FRY，呢個係知道嘅。

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但係究竟佢哋知道 FRY 呢個 sample 係用咗，即係而佢哋實際上係訂 50 力，呢一度就有啲即係奇怪嘅地方呢就係莫先生--莫先生佢--我哋睇番雋景擺出嚟啲單，莫先生係 Wing Hing，莫先生係 Wing Hing，即係佢負責嘅邨呢，其中有一條相對即係比較 mysterious 少少，就係啲單睇出嚟佢全部都訂 FRY--應該係清河邨，清河邨。

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主席：清河邨係例外，因為清河邨佢係接人哋手尾。

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石先生：接人哋手尾。

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主席：係。

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石先生：所以--但係我哋睇番人哋個--唔係，即係呢個我理解。

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主席：之前嗰個森記，係。

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石先生：森記就訂咗一炸 FRY。

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主席：係，係。

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石先生：後來我哋睇番雋景擺出嚟啲單，莫先生訂啲嘅都係訂 FRY，所以即係總之文件上就我哋係有見到森記上手有訂過 FRY。

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主席：係。

石先生：莫先生接手之後，佢都有訂過 FRY，但係雋景擺出嚟嘅單就有嘢係 show 到佢訂咗啲唔合規格嘅焊料，但係實際上就用咗。所以--呢一度我哋唔好理住，但係即係嗰個證據上就係，莫先生佢亦都係屬於嗰一類有訂到 FRY 嘅 contractor 嚟。

主席：佢係有訂到 FRY，因為伍克明嗰陣時嘅證據就係話，佢要去接手嗰陣時，親自帶佢去睇，就講畀佢聽話要用。

石先生：係。所以即係呢一度我--我提出呢一點呢就係--即係又係--即係始終講番就係話即係關於呢一啲嘅 plumbing subcontractors，佢哋之所以訂咗我哋叫做 non-compliant 嘅焊料，係真係基於一時順手或者一時無知，比較 haphazard 咁樣。我今日順口叫乜就叫乜，或者佢畀乜我就要乜；定係一個所謂 pre-planned profit-motivated 嘅一種訂法。

因為 simplistic 啲咁講，如果一個 pre-planned profit motivated 嘅做法，即係我哋會 expect 就話佢一刀切，全部都訂平嘢。

主席：唔一定，唔一定。

石先生：唔。當然可能有第二啲嘢解釋，但係即係一般常理就係話...

主席：係，唔一定，因為我點知幾時有人嚟查，或者查唔查。我係唔係做樣都要買啲返嚟擺喺度呀。

石先生：或者當然即係伍克明先生帶佢去見嘅時候可能。

主席：係，所以你見到好多一頭一尾係用，但係中間全部唔用。

石先生：唔。係有一啲咁樣比較奇怪嘅情況。

主席：係，係。即係所以你要--你要睇，如果你--即係如果我哋要作出一啲咁樣嘅 determination 就真係要--就係要睇。你話係咪完全睇唔到呢？又未必睇唔到。

石先生：唔。即係我--係可以作出好多唔同嘅理論出嚟，即係點解佢哋會係咁樣去...

主席：都話我哋啲 criminal judge 同你哋啲 civil practitioners

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有少少唔同㗎，諗嘢，唔。

石先生：可以話係即係比較務實，robust。

主席：你可以咁講。

石先生：另外，就係到蕭健煌先生，蕭健煌先生佢係負責一個--佢個 sample 比較少嘅，佢係...

主席：一個 project 啫佢，唔。

石先生：一個 project，同埋即係 Prosperity 擺出嚟嘅單相對少嘅，就係全部都係訂咗 50 力。

主席：同埋得一個單位超標，如果我有記錯就，唔。

石先生：係，冇錯。關於雋景嗰方面，由於雋景嘅陳詞 1:00pm 先至入，所以我就原本預先有一啲係關於雋景嘅陳詞，我諗住我就保留番一陣間就--如果雋景 1:00pm 入之後我有需要補充，可能係 2:30pm。

主席：好。

石先生：最後我想講講，就係關於 coalition of the victims，即係苦主聯盟，佢嗰度提出其中一點，就係關於請求委員會向即係政府係作出一個建議，就係政府補貼呢個佢哋嘅律師團隊嘅律師費用。

呢一點我哋喺開始呢一個研訊嘅時候都即係曾經有過一個嘅討論，英國係有一啲嘅例子，英國而家當然佢自己嘅法例，另外已經行咗自己嘅路。但係就算即係之前英國嗰方面嘅一啲做法都係--基於英國嗰方面相關嘅大臣，即係政府嘅 minister 係曾經表過態，就話如果相關嘅 commission of the enquiry 係作出一個咁樣嘅推薦，係話要政府係提供訟費協助，政府係會咁做嘅。

就係基於嗰個嘅情況之下，就相關嘅調查委員會係作出咗有關嘅一啲 recommendation。我哋呢一個案件裏面，我哋 so far，我哋就有一啲嘅證據話畀我哋聽，即係政府方面佢採取嘅咩嘢態度。我哋甚至唔知道呢一個範疇，因為呢個 obviously 就唔係 legal aid，所以就唔係即係民政事務局嘅範疇。我哋甚至唔知道係邊個局係會負責呢樣嘢，但係我哋唔好理住，總之我哋唔知道究竟政府方面，如果委員會係作出咗呢一個嘅推薦，政府方面嘅取態係會點樣。

當然，唔知道政府會點樣反應，就唔影響委員會應唔應該即係作出



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呢一個嘅即係 recommendation，即係 to a certain extent。但係就--即係始終我哋就係唔知道，都冇一個先例，呢一個係要--即係委員會去考慮。但係冇先例，當然本身亦都唔係一個理由，如果委員會覺得係有即係好迫切嘅需要，如果委員會覺得苦主聯盟喺今次嘅事件裏面係提出咗一啲證據或者論據係對委員會真係有幫助，而佢哋係真係有合理嘅理由係參與嘅話，咁委員...

主席：但係佢哋提出啲問題，啲你哋全部都 cover 晒喇基本上。

石先生：係。但係就--都可以咁講嘅。

主席：係囉，係咪？

石先生：呢個係其中一個要考慮嘅地方。當然另外一個要考慮嘅地方，就係如果要即係好仔細咁樣去剖釋，當然可以就係話其實即係好多佢哋問嘅問題都係已經問過晒。但係從佢哋嘅角度可能佢哋亦都可以係合理地話我係想要我哋嘅聲音。

當然，佢哋嘅聲音係可以問幾多，或者問幾長，呢個係另外嘅一個考慮。當然委員會係絕對可以--其中一個酌情，就係話委員會係唔會 recommend 畀晒所有，可以委員會係 recommend 係畀某一個 percentage，呢一個係即係我哋會留待委員會去決定。

我剩番嘅其實就係關於雋景方面嘅一啲陣詞，...

主席：雋景，係，好。

石先生：...但係由於我頭先所講，雋景會係 1 點鐘先至入，所以我諗我會提出就係話我哋兩點半返一返嚟，我哋會有機會睇完雋景嘅陳述之後，睇下我哋有冇補充，或者我再睇下我本身其他嘅嘢有冇任何嘅補充，呢個係比較理想嘅做法。

主席：好。兩點半，好。暫定兩點半，唔該。

下午 12 時 48 分聆訊押後

下午 2 時 36 分恢復聆訊

出席人士如前。

石先生：主席、委員，係。我哋喺午飯嘅時候就收到雋景一方提供畫面嘅陳述。剩番對雋景一方，嗰個討論嘅範圍比較狹窄，其實就係雋景作為呢啲焊料嘅供應商，佢牽涉嘅程度係乜嘢，同埋佢--即係有啲咩嘢係可以知道或者係唔知嘅呢咁樣。

雋景就係呢個案件裏面絕大部分嘅物料供應商。佢供應咗嘅物料有 FRY，亦都有 50 力，呢個係不容爭議嘅事實嚟。其中一個即係比較重要啲，可能需要委員會去裁決嘅，就係 Prosperity 雋景係供應呢一啲嘅物料嘅時候，佢知唔知道--雋景--首先我哋嘅 background 就係雋景其實係提供過好多啲咁樣嘅 test certificate，一啲嘅--以前嘅紀錄去證明佢呢一啲係房委去批准，所以就知房委批准 FRY 呢個係--雋景就係知道。

佢就提供咗 50 力呢一啲含鉛嘅焊料，個爭拗點就係究竟其實佢提供嘅時候，佢知唔知道其實呢啲含鉛嘅焊料係會被嗰啲水喉嘅分判商要嚟用嘅食水喉嗰度嘅呢。雋景嘅一個論據或者佢嘅證供一路都係話焊料嘅嘢，就算含鉛嘅焊料都可以要嚟用嘅非食水嘅系統嗰度，即係好多嘅例子講咗出嚟。

我哋嘅結案陳詞就有即係引述過一啲嘅證供，其中有一段就係鄒先生，應該係受到主席喺度即係問佢嘅時候，佢都接受咗，佢一開頭就係話唔知道即係其實提供咗啲物料之後人哋會點用，但係佢後來都接受咗，我哋亦都畀咗嗰個 transcript 嘅 reference。其實佢都接受，起碼佢會知道其中一個可能嘅用途，就係作為做食水系統。

我哋嘅陣詞亦都提到就係話，即係起碼委員會可以作出嘅事實認定就係，雋景起碼應該知道，佢實際上有冇真係主觀地諗到我知道係另外一回事，但係起碼佢應該係知道 ought to have known，就係佢供應出去嘅含鉛嗰隻焊料，leaded solder 係會被用為食水系統。

呢度可能就要考慮埋就話可唔可以即係認定埋 make 一啲 findings，就係話佢賣畀邊一個，何標記，定係呢個，定係嗰個會係要嚟做食水呢咁樣。

呢度就視乎委員會佢本身嗰個取態，如果委員會佢想 make 一啲比較仔細啲嘅 findings，委員會可以仔細啲咁樣去 make 一個 inference。但係如果委員會覺得未必需要係指名道姓地講話雋景賣畀何標記，佢知道何標記係會要嚟做食水喉，或者佢賣畀金日又點

樣盛嘅話，委員會就未必有呢個需要。

因為其實可能如果要仔細咁樣諗嘅話，亦都要可能考慮埋就話佢賣幾多，同埋諸如此類。因為如果佢賣好多嘅，嗰個 inference 會強啲。因為如果佢係即係一紮紮，睇番嗰啲單，原來係不斷地枕住咁樣送一啲 leaded solder 去某個地盤，咁嗰個 inference 會強啲。因為就算你當佢真係 leaded solder，可以要嚟用嘢好多其他唔同嘅用途，但係你呢個係水喉分判商，你又知道佢--即係同佢交往咁耐，枕住咁樣訂 leaded solder 嘅話，都唔可能用晒要嚟做其他嘅用途。所以佢訂嘅數量如果多，嗰個 inference 可能係會強少少；佢如果係--即係證據上佢訂嘅數量唔係咁多，雋景就可能可以話「喂，我點知啫，佢訂得啲少少」咁樣。

呢個可能就係即係委員會當然要考慮番，就係關於每一個 individual 嘅 plumbing contractor，佢訂嗰個數量係幾多。但係至低限度，based on 常理，或者係 based on 鄒先生佢嚟供人台裏面佢所接受嘅，就係佢都起碼 ought to have known，佢都話可以咁講，我都應該知道送咗出去，可以用嚟其中一個用途就係做食水。

當然我睇番何標記嗰個 submission，何標記就係即係 go further 嘅，何標記就直情就係話雋景應該--即係應該作出一啲嘅提醒。即係作為委員會嘅律師，我話...（聽不清）何標記就有話佢應該拒絕賣畀佢，雋景都係咁講，因為我打開門口做生意，你哋走嚟同我買嘢，我有理由話我有個責任唔賣畀你。個爭拗點可能就係何標記而家就話你應該提醒我，你提醒咗我就有事咁樣。

但係至於何標記有--即係雋景有冇一個法律嘅責任去提醒何標記，或者佢冇提醒何標記，會唔會可能令到何標記事實上係因為缺乏一個提醒而又有去用呢咁樣。呢樣嘢就其實係證據上就有係點樣 explore 過。台者舉個例，即係何標記嘅證人喺個證人台裏面亦都有話過話你如果提咗我，我就唔會用。

呢一個亦都係未必係有需要嚟即係呢個委員會裏面去裁定。因為即係我亦都係重複番嗰一句就係話「有冇法律責任提醒，如果你提醒咗之後會唔會唔用」。呢個其實可能會牽涉到就係一啲法律嘅問題，duty of care 諸如此類。

但係即係 for the purposes of 呢個咁樣嘅--for 今次嘅呢個調查，我諗即係委員會可以起碼作出嘅一個事實認定，就係我頭先

所講，委員會可能想作出 individual 對個別嘅 plumbing subcontractor，雋景賣畀佢嘅時候，佢知或者唔知，可能可以行得呢一步，但係就有冇需要作出一個認定就話你有冇責任走去提醒佢，呢一度就其實未必有需要。呢個就係我哋對雋景呢一個課題嘅陳詞。

主席：係。

石先生：委員會嘅代表律師，我哋對整個案件嘅陳詞就係咁多。當然我哋書面上已經係--即係寫咗好多好多嘢，希望委員會都可以全部作為參考。

主席：好，唔該晒。我哋今次嘅研訊就係告一段落。多謝各位律師、大律師嚟過去呢六十幾、七十日嘅合作。同埋最重要就多謝各位嘅忍耐。

另外，我亦都想喺呢一度係特別多謝係我哋從來都有見過面嘅即時傳譯員；另外，當然亦都要多謝坐喺我前面呢兩位女士，佢哋亦都係好 diligently 咁樣樣喺度將我哋所講嘅嘢打晒出嚟，各位律師先至可以即日可以睇到我哋個 transcript。

我哋個研訊就係告一段落，多謝晒各位。

2016年3月17日

下午2時44分聆訊完畢

C Thursday, 17 March 2016 C

(9.35 am)

D (Transcript of simultaneous interpretation D

E except where otherwise specified) E

Submissions by DR McCOY

F CHAIRMAN: (In English) Yes, Mr McCoy. F

G DR McCOY: (In English) Mr Chairman and Commissioner, on G  
H behalf of Paul Y General Contractors Ltd, my submissions H  
I will be very short, in summary. I

I It is highly likely, we suggest, that the Commission I  
J will find that the reason lead is found in water in J  
K public housing estates is because of a number of K  
L factors, principally the use of lead solder. But the L  
M problem that is before the Commission would not have M  
N happened, or perhaps would have been found much more N  
O quickly, if a number of other factors had not existed. O

N First of all, the Water Supplies Department N  
O effectively took the position that their responsibility O  
P stopped at the inside service boundary. The Housing P  
Q Authority took the view that they could rely upon the P  
Q specialist assistance of the Water Supplies Department Q  
R for the housing estate area. R

R On analysis, therefore, no party was taking R  
S responsibility inside the housing estates for water S  
T quality. Instead of both being responsible, overlap, we T  
U  
U  
V

have the opposite, underlap, in which no party appears to believe that it was responsible.

The Housing Authority appears to have taken the view, and the Commission will remember the rather self-contented way the Housing Authority officials gave their evidence, that as long as they had a contract with the contractors, they had absolved themselves of all responsibilities, legal and social.

That cannot be right. The Housing Authority cannot make the contractors more responsible for their own fundamental failings.

Under the General Conditions of Contract, the Commission knows that at any time the Housing Authority could have required the contractors to test for the presence of lead in water, but that would have been a variation of the contract, meaning the Housing Authority would have had to pay for those tests.

The Commission may conclude that overall, a fundamental and overarching cause was the lack of awareness of the risk, by all, in the process.

We know the Water Supplies Department effectively delegated their responsibility for the installation to the licensed plumbers, and the Commission will determine that there does not exist any robust training or vocational requirements for licensed plumbers.

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

B Commission of Inquiry into Excess Lead Found in Drinking Water Day 67 B

C So effectively the parties at the very top had C

D cascaded down their responsibility to the person at the D

E very bottom, namely the licensed plumber. E

F While undoubtedly lead solder is a major cause of F

G the levels, it's plainly, on our case, not the only G

H cause. The Commission may recall the Hong Kong H

I University masters thesis of 1987 actually showed then I

J higher levels of lead than had been found in the housing J

K estates, and the evidence of Prof Bellinger was that K

L because lead doesn't degrade, doesn't transmute into L

M something else, it simply is retained in the M

N environment. So the Hong Kong ecosystem is going to N

O trap the lead dust inside the environment and the shape O

P and configuration of public housing estates may lead to P

Q that more easily happening. Q

R So the sources of lead will also be the historical R

S uses of petroleum, lead petroleum, in Hong Kong, because S

T that lead simply cannot lead the environment except by T

U wind or by water. The two housing estates that Paul Y U

V is involved with happen to be adjacent to hot-spots V

where there had been massive lead petroleum usage in the

past.

I have already referred to the demarcation dispute

as to responsibility between HA and WSD. Of course, the

Housing Authority has some 500 to 600 qualified

professionals, tertiary education and high professional achievements, and they are undoubtedly utterly reputable, highly qualified specialists in every aspect of design, building and construction, and the Housing Authority has been an extremely good success for Hong Kong over the years.

Paul Y are builders. We are general contractors. It's even in the name of the company.

In terms of any responsibility, it is our submission that the relativity of responsibility of the contractors must be less, much less, than that of the Housing Authority, with all of that expertise and resources. It would be quite unreasonable to expect the contractors to carry a responsibility greater than the party at the top, which flourishes all that ability and expertise.

We also know that the Housing Authority sat with the Water Supplies Department on various committees. The contractors are not party to that. We know that the Water Supplies Department had a most inadequate if even existing research capacity. We know they don't know how to measure water and sample properly. Their repeated failings will be obvious to the Commission. In fact, they must have had so many shocks throughout the course of this Commission, they are probably better now known as the Water Surprise Department than the Water Supplies



Department.

The final position that I advance on behalf of the Paul Y contractor is that when it's looked back, the responsibility of the contractor is to do its best in terms of the contract. The Commission knows that the terms of the contract not only identified lead but also cadmium, which is even more potentially poisonous than lead, yet there was no process in place for the testing of that.

The fundamental submission is that the contractors must have significantly less responsibility. At the end of the day, as the World Health Organization emphasised in the introduction to their standards, clean and drinkable water is a human right. There is a specialist government department in relation to water. That's its only job. Yet we know, if we had relied upon the WSD, even now there would have been no testing of lead in water. It wasn't the WSD that found the lead in water; it was a member of the public. So there's a fundamental and, we submit, structural inadequacy in that department.

Those are the submissions that I wish to make. I am obliged.

CHAIRMAN: (In English) Thank you very much, Mr McCoy.

Submissions by MR HO

MR HO: Thank you, Chairman.

I believe that having listened to all the witnesses, one of the indisputable facts is that why is it that lead was found in drinking water in the housing estates? It was because there were materials that contained lead that caused the problem. That is consistent with the findings of the Water Supplies Department's task force.

Obviously, this Commission will look at whether there are any inadequacies in the monitoring system and what are the causes. In our submission, we have stated the contractual responsibilities and the legal responsibilities. We have elaborated in detail in our submission. I don't propose to take this opportunity to highlight every single entities that were involved.

But there is one point I would like to make here. That is, this phrase or expression, "(in English) lack of awareness", has been repeated many times at this Commission. So the phrase "(in English) lack of awareness" -- in Cantonese we would say it's "a lack of awareness" -- what do they mean? The WSD, they have divided the awareness into four levels, so that might have been a deliberate written submission, a deliberate preparation, and I think it is a relatively complex description. That is this lack of awareness is now

divided into four levels.

So it actually might not be that complex. So what are we talking about? After hearing so many witnesses, I would like the Commission to consider the different Housing Authority witnesses -- actually, the problem is, we might all know that lead is in the environment, so lead in the water supply material, it should not exist or it should be at a minimum level.

So, given such a general principle that lead is harmful to the human body, we might know about that. So what are we talking about, this lack of awareness; what are we referring to? We are saying there was no understanding that if we were to describe it using a different phrase, so I think we should say we just were not aware and we did not understand the crux of the issue; there was no understanding of the risk of certain issues.

So what did we not understand? I have identified two issues. First, some people have used non-compliant material, and in this incident we are referring to soldering material; they did not understand. Second, they did not understand that if they had used non-compliant material, then it would affect -- or they didn't know what the consequences were to the quality of drinking water.

Because of this lack of understanding, the lack of knowledge or they didn't have this awareness, so there was no point in further asking that if there was lead in water, that lead might exceed the WHO levels, and so on. That would be a subsequent issue, and you can say there was no understanding of that consequence.

I would like to deal with this problem in the final Commission report. Page 26. In this paragraph, they have highlighted what lack of awareness is referring to. Subparagraph (4) on page 26:

"(In English) The Commission has heard evidence from the relevant chief architects that they knew about the harmful effect of lead in general but were not aware of the risk of excess lead in drinking water arising from the use of leaded solders."

Then they refer to Ann Mary Tam, the chief architect, and she says:

"I think it's an issue. If the law requires something, we would comply. But sometimes all this work that the building industry does, they have to understand all the consequential risks and we might not be aware of these outcomes. We might not be aware, and you can say that it's not that we don't know, it's just that we weren't aware, and if you say if the trade continues in such a manner and if they had done for a long time, and

if there was no regulatory reminder, then we would just follow the trade practice."

I think that paragraph was referring to this lack of awareness. They just weren't cognisant of certain risks.

In the Commission counsel's submission, there is a substantial amount of material dealing with 2002, the Housing Authority, when they looked into introducing copper tubes on a large scale and the processes that were gone through. So we have heard the evidence, and we have also called Ms Ada Fung to give evidence for a second time.

So I just want to highlight, the background -- you might recall that why did the Housing Authority, when they were thinking about introducing copper tubes, the background was at that time there was some repair and maintenance work being done and they were using copper tubes, but other construction sites, the non-public housing sites, they were also widely using copper tubes.

There were advantages to using copper tubes. It was easier to connect. The HA at that time were very careful. You could see there was a liaison group, LGCQ, minutes of meetings, in Ms Ada Fung's evidence.

So, during the handling of this, they considered a lot of factors. It wasn't just that it was being used

in the private sector and therefore they should introduce it. They were thinking about a lot of different issues.

The Commission might recall, at that time, in the Housing Authority, they had compiled a report. So you could look at bundle B15.4 -- there was a report that they considered -- B15.4, page 40002.

This report, if you look at paragraph 3, you can see that they considered the advantages and disadvantages of uPVC-lined GI pipes versus copper pipes. So you see there were pros and cons. For example, the advantages of using copper pipes, we can see it could withstand pressure up to 25 bars; and second, it also refers to corrosion resistance and durability, ease of jointing. The second point was about formability, ease of use, essentially.

So uPVC versus copper tubes, at that time the consideration was the function, the ease of use, its availability, whether it could be procured in the market, whether we could find this copper tube. There was a very detailed study and a report. So, under these circumstances, copper tubes were introduced as an additional choice for contractors. So they did some market studies and came up with these findings.

The Commission would also recall that while they

were taking that direction, the HA was also looking at contracts, whether the contracts should be updated so that the contractors could have extra choice. So there was a working group which updated the contract specifications.

So when that direction was identified, you will recall the evidence that the BSEs, the building services engineers, they would update the specification information, and you would have heard the relevant evidence.

Do not misunderstand. I am not trying to avoid the issue. I am not trying to avoid apportioning blame. But I would like the Commission to consider, after hearing Mr Ng, after identifying the objective facts, this building service engineer, when he received this assignment to update the specifications, at that time the environment was that copper tubes or using jointing materials for copper tubes, that wasn't a new material. It was used outside of HA projects.

You will recall the building services department, in the 1993 contract, they had said that leaded material, leaded solder, should not be used.

So, at that time, copper tubes had already been used, solder material had already been used for a while, and there was no indication or incident that indicated

that there was a problem.

So, I repeat again, I am not trying to avoid the issue. I believe and I hope to paint the actual conditions and actual background for the Commission to consider.

In choosing materials to update the specifications, we heard Mr Ng say that basically he also took a cautious approach. That is, first of all, he looked at the legal requirements, so he opened up the Waterworks Ordinance, the Waterworks Regulations, it was Cap 864 material. Mr Ng himself knew that that might not be the most up-to-date requirement; EN 1254 would have been the most updated requirement. He felt that that 1254 description was not accurate in the first annex, in the first schedule; that requirement regarding solder material was not up-to-date. So Mr Ng felt that the accuracy could be improved, so he included that in the specifications.

In the process, we considered that Mr Ng himself, he's an engineer for materials, it would not be hard to understand his focus of attention. They talked about the ease of use, the functionality, the availability in the market and so on. These are part of his focus of attention and he had to clarify the matter as much as possible. I think Mr Ng, as a BSE, he had done what he



was supposed to do.

CHAIRMAN: I understand. He highlighted that for a particular reason. Of course I understand what he said in his evidence. But my point is that it's not so simple as to make it easy for people to understand.

MR HO: Chairman, I am proposing the Commission to accept his evidence. It's not a question of whether we accept the evidence. The issue was whether he was aware of that. It is a question of awareness. He was trying to clarify things that were considered to be not sufficiently clear, and there were no signs that vigilance had to be stepped up. He was doing this in that particular context.

CHAIRMAN: The point I am trying to make is that I know what he had to say, but the question is -- flux, we never talked about it -- why is it that he didn't include flux? Are you with me?

MR HO: In the whole process, shouldn't there be higher vigilance regarding solder materials?

CHAIRMAN: I've got a question, a nagging question in my mind. I don't think there is an answer to it. Mr Ng might have known more than he told us.

MR HO: Of course, I wouldn't query you.

CHAIRMAN: If you look at the evidence given by the HA staff, as our counsel already pointed out, there was

a line to take, they had to toe a line, and everyone was being consistent.

MR HO: I would not propose the Commission to make any speculation.

CHAIRMAN: Well, there is this question mark hanging in my mind.

MR HO: We are looking at facts. We are looking at evidence. We are looking at the evidence given by the witnesses.

CHAIRMAN: Well, I said what I said a moment ago -- flux, for instance, why was it not written down there?

MR HO: I think, to a certain extent, the Commission's counsel is being fair in certain areas.

CHAIRMAN: If it was beneficial, if it's favourable to a party, then you would say that it is fair.

MR HO: I am saying that even for the Housing Authority, the counsel of the Commission is being fair. Like, for instance, they said that the Housing Authority, as a contract manager or as a developer, the focus is not so much on safety of drinking water. The focus is on the building works.

I think, to a certain extent, they said that the Housing Authority, as a contract manager, they are talking about the major principles.

CHAIRMAN: They wouldn't say -- of course the Housing

Authority's function, the main function is like they said, to make sure that the buildings would not fall down. I don't think they would say that the electricity supplier would not electrocute people and the gas supplier will not poison people; they wouldn't go so far as to say this.

MR HO: Yes, these are major principles. I am not suggesting that these principles -- they are just mentioning these in passing. They are being serious, I am sure. They are talking about what the Housing Authority was focusing on. I am being fairer than them.

CHAIRMAN: I think the Housing Authority has to pay particular attention to safety of every single aspect of buildings, not just building safety. Whether the lifts are safe, that's just as important; electricity supply, just as important; gas supply, just as important. So, in that sense, water is something that they should be rightly concerned about.

MR HO: Right. That brings us to the question: Prof Fawell made a colourful expression, "All the eyes are focused on the buildings." We are looking at the safety of drinking water here. The Housing Authority has so many things to look at. As Chairman said, in the whole process of construction, they had to look at the progress, the legality, the compliance with the law, and

they have to make sure there is compliance with all the regulatory bodies.

CHAIRMAN: The Housing Authority has to look at so many things, but there are 11 players on this soccer pitch, if you like, and they have to look at all these players.

MR HO: On the question of water safety, counsel for the Commission said already that the Housing Authority is not exclusively responsible for looking at safety of drinking water. There are other departments that are responsible.

So if you cast your mind back to 2002, were there any problems in the process of updating? Shouldn't they have included more?

I must emphasise that we are not trying to evade this issue. We are now presenting the objective facts. We are presenting the role and the function of the Housing Authority. We are presenting the perspective of Mr Ng as a BSE.

If there are other people who highlighted the fact that in the process of construction, you may look at the functionality, you may look at the implications arising from these materials, but if someone were to point out that safety of drinking water would also be a focus of attention; if someone pointed that out, they would have made a difference.

In 2002, in that process, the Housing Authority did ask the Water Supplies Department. Some argued that we were asking really the alignment of the piping, but if you look at the memo, I would like to make a brief mention here. B15.4, page 40128. That is the memo from the HD to the WSD, and page 40130 is the reply.

Page 40128, paragraph 2:

"(In English) In the future, we are considering to widen the tenderers' choice of piping materials for our standard block construction projects as follows:

Arrangement 1: (Chinese spoken).

Arrangement 2: a combination of ductile iron pipe and copper pipe ..."

And then in the middle, about the riser, the pressure.

Paragraph number 4:

"Please let us have your agreement/comment on the above arrangements in the selection of piping materials ..."

So this is about the choice of materials, and the HD was soliciting the WSD's replies.

Page 40130, that is the reply:

"(In English) I refer to your MUR and would like to advise that I have no comment to your proposed alternative arrangements for cold and hot water pipes."

"No comment". Choice of materials, "No comment".

The second point may have to do with the solder materials, and it's revealing:

"(In English) However, it is recommended that DI pipes to BSEN 545 with cement mortar lining instead of cold bitumen coated internally shall be used. Please be informed that all DI pipes used by our department for all public projects are internally lined with cement mortar to BSEN 545."

This is a reminder for the Housing Authority or Housing Department that they have to pay attention to BSEN 545 with cement mortar lining. For someone who received this memo, the focus was on this reminder. But there is nothing about the use of soldering materials, whether there is any risk of the presence of lead, and if there is a presence of lead, what implications there would be on the quality of drinking water.

Even if I don't argue how to interpret the memo, the asking memo on page 40128, about the choice of materials -- we are not arguing whether it was about the drawings or whether the use of copper pipes was good enough. I don't think that's a way to interpret the memo. Even if the memo was about the alignment of the copper pipes, the drawings and so on, the Housing Authority's eyes may not be on the ball of water safety.

C For the WSD, they may not see the same thing as the  
Housing Authority.

C

D CHAIRMAN: I think, to a certain extent, it shows that if  
E the person answering the question was the chief  
F engineer, then this may have to do with the  
G compartmentalisation of the department. This person may  
not be interested in water quality at all.

D

E

F

G

H MR HO: I am stating the fact. The fact is, if at that  
I time, as in paragraph 2, some issue was raised -- if you  
J use copper pipes then you might need to use some  
K soldering material, then you need to take note of  
L certain issues -- then the awareness or understanding of  
the risks -- to use a more vivid term, it would have  
clicked.

H

I

J

K

L

M CHAIRMAN: It's not clicking -- not just with you. It was  
also the case with the WSD.

M

N Put simply, the WSD, you can't say, "It's because  
O it's been too long ago, all the people have retired,  
P I don't know" -- you can't say that. It was banned in  
1938. Lead pipes were banned in 1938. So, to a certain  
Q extent, you would have known that there was a problem.

N

O

P

Q

R So, by the 1980s, when you drafted 864 conditions,  
S when you said part 2 of 864, it might not have clicked,  
T because the C and G grades still had contained lead. By  
1987, it might still have not clicked. It might have

R

S

T

U

C never clicked at all. C

D So, from 1938 onwards, we have been through the D  
E World War II riots and this and that, the individuals E  
F might not click with individuals, but you cannot say the F  
G same for institutions. G

F MR HO: I am not in the best position to respond to that. F

G My colleague will respond to that. G

H But I was saying just now that that was the H  
I objective background and situation. That's what led to H  
J the lack of awareness and why it did not click. I

J CHAIRMAN: By the same token, when I'm referring to WSD -- J  
K well, HD is part of the Hong Kong Government, the K  
L Housing Department. L

L MR HO: I think we have heard Prof Fawell give evidence in L  
M this Commission. He used the expression "eyes on the M  
N ball". I think that is the crux of the issue, which N  
O person should have their eyes on the water quality ball, O  
P when other people would focus on other issues. P

P I think, by 2002, we have asked the relevant P  
Q departments, and the response was the Housing Department Q  
R staff, they weren't aware or they didn't have any R  
S understanding or it didn't click with them. Was it S  
T because -- was it forgivable? Was it understandable? T  
U I just want to give you the background and the facts. U  
V I am not avoiding the issue, I repeat. V



CHAIRMAN: I understand what you are saying.

MR HO: It's just that when we are talking about apportioning responsibility, then these would have been the objective facts that led to that scenario.

You have also heard a lot of evidence about different specialities, professional duties, especially in November when the Commission received a written submission from the HKIA, the Institute of Architects, they raised the point that there is a specialisation. Under the legal framework, specialisation was, if you refer to the 2006 report, that was also part of the background. That is, under the WWO, WWR, water quality, we had specialisation of tasks. The licensed plumber had a specific role.

So elevators, they have a specific regulatory authority; electricity, utilities and aircon, fire safety, and so on, it's managed by different departments. We had EMSD, and so on, elevators, utilities; it's all specialised. So that's also part of the background for the Commission to understand, when we are starting to apportion the responsibility.

So, if you understand this lack of understanding or lack of awareness, the consequences, such as 6210, whether there are inadequacies in the form, why weren't there more stringent requirements regarding solder

material, why wasn't there concern over heavy metals -- you can ask the contractors to submit material samples; did you compare the on-site material with the sample material? Actually, all of this arose from the initial question. That is, there wasn't sufficient understanding.

If people were aware that -- you can call it control or monitoring measures -- it wouldn't be difficult. It's not a matter of laziness or people trying to avoid their responsibilities, or other issues that led to the deficiency of these control measures. It was just a matter of awareness and understanding. It comes back to understanding at the time. That is, if there was a bit more -- if there were more reminders, to help people focus.

So it is quite certain that the HD have a control system for material, risk-based --

CHAIRMAN: In respect of plumbing works?

MR HO: This is something that I want the Commission to examine, what were the conditions at the time.

CHAIRMAN: We are not saying there was a lack of focus on one area. If you refer to PLU1, everything was in focus except for brackets and anchors, and up till now nobody can convince us why we need sample submissions, why we need people to take delivery.

MR HO: I understand. That's just one aspect of control and monitoring.

CHAIRMAN: I mean that brackets and anchors, something must have happened in the past. It was important enough for it to come under close scrutiny.

But aside from this miscellaneous stuff, the whole water quality system, there's no problem.

MR HO: (Chinese spoken).

CHAIRMAN: So you cannot say that there's no risk. If we know that there are two issues in risk assessment, the likelihood and the consequences, that is the impact -- so even if the likelihood is install, but if the impact is large, you still have to do something about it.

So, if you look at the whole plumbing system, we are just looking at PLU1. PLU2, you examine the shape, the colour and everything. You just overlooked water quality.

MR HO: I want to respond. A risk-based approach, in 6210 you heard how it was developed. It didn't pop out of the blue; it wasn't made up arbitrarily. There were a lot of factors.

CHAIRMAN: I'm not going to argue with you on what was said in 6210, but if you are saying if we did a risk assessment for water quality, we haven't seen that yet.

MR HO: This goes back to the question of lack of awareness.

The lack of awareness arose because --

CHAIRMAN: Well, there is an awareness. There's a risk assessment. I should say that when we are talking about solder, a sample was taken, so that means that person thought that it was a hazard.

MR HO: (Chinese spoken).

CHAIRMAN: I understand. He might have even said, "We would think that this might be a hazard, that's why we need to identify it; we need to highlight the risk." Well, the likelihood, how likely it is, it might be very small, because I have specifications that deal with that and I have faith in the contractors, but if you look in closer scrutiny, where did the awareness fall short, it's in the latter part. That is the impact, the adverse impact; that's where he fell short. And there was no further follow-up.

MR HO: That's correct. Correct. I don't object to that analysis. This lack of awareness, if we have non-compliant material, the consequences on water quality --

CHAIRMAN: That's where you interject and you are raising flags.

MR HO: As you said just now, if somebody had used a wrong material, what is this risk? It's a matter of degree. I am saying at that time there was no awareness. It was

also because of some objective conditions. Copper tubes were not a new procedure or new material. There were no incidents in the industry. There was no problem. In my written submission, I have also quoted the WSD witness, Mr Hugo Kan -- he's an expert, a very conscientious LP -- and he said he felt surprised when this incident happened.

So a very experienced practitioner, doing this work day to day, this I think is quite in line with the actual conditions. That is, nobody was aware that somebody might have used a non-compliant solder material, and I think that as a frontline practitioner, someone like that, versus the AP or HD or BSEs, they were less aware of the situation or we can understand.

CHAIRMAN: If you look at the 11 affected estates, their completion dates are from 2008 all the way to 2014, so we are now just dealing with the affected estates. We know that there were non-affected estates and lead was still found. So you cannot state objectively that they were totally unaware.

MR HO: The fact is, the readings, not toxicity, the reading level, this is an objective fact. But you cannot therefore infer that they were aware.

CHAIRMAN: No, I am saying that over the years it was used so widely in so many estates, and if they had these

problems, then is it really, as we heard, that these are just isolated incidents, it's just that somebody didn't comply and used non-compliant material?

MR HO: The Commission has been listening to the evidence. Some said that they knew about it and they still used it. But Mr Kan Kwok Leung, he is a good example.

I think the Commission should have regard to this objective fact.

CHAIRMAN: The fact remains that no one ever tested water for lead. Nobody tested the joints or the components and nobody tested anything for lead.

MR HO: What I am saying is that these objective facts should be taken into account by the Commission.

CHAIRMAN: I understand.

MR HO: Maybe my expression in Chinese is not good enough. BSE -- I said the material engineer -- BSE covers building services, I think I have to correct myself, not "material engineer". Maybe my Chinese expression is not good enough.

CHAIRMAN: You haven't translated wrong. You did say "materials", but I understand what you are trying to say.

MR HO: When there are views that said that the Housing Authority hasn't done well, hasn't done right, there were no control measures, and there were flaws --

I think at the end of the day it's down to the lack of awareness. There was no recognition of the risks and also the implication arising from the risks. I hope that you would consider a whole host of background details.

Of course, we have to look at the legal, regulatory framework. The responsibility regarding the plumbing lies with the LP. It is the LP that is responsible for the installation work. There are contractual obligations on the LP. I don't agree that the main contractor can shift the responsibility.

CHAIRMAN: They are not saying they shifted the responsibility to you. They are saying they assume no greater responsibility than you.

MR HO: On the frontline, the continuous supervision responsibility lies with the main contractor. They do have their unshakeable contractual responsibilities.

Before the commencement of a project, the main contractor has to submit to the Housing Authority a subcontractor management plan. In our submission, we have cited the China State example. We have gone through these subcontractor management plans. There are so many different clauses, like they have to test all the materials delivered to the site. We understand that this is not consistent with what actually happened. But

if they have done what they said they would do, if they have discharged the contractual responsibility, things would have happened differently.

So, when we look at the role of the Housing Authority in putting together the safety measures, we have to take into account the contractual obligations, the things that they are supposed to do. This is part of the background that has to be taken into consideration.

I hope the Commission would consider, after the incident, the Housing Department has been proactively handling the matter. In July, shortly after the incident, the Housing Authority has appointed a Review Committee. There was an interim report, and in December the final report was released to the members of the public. So the Housing Department has been proactive in confronting the lead in water incident.

In the Review Committee, there are constructive recommendations like the centralised procurement of the materials, these materials that are likely to give rise to problems. The contractors have to check the materials delivered to the site, and they have to be stored properly. There has to be a proper ledger, proper record. If anything were to go wrong, there is an audit trail, to trace who should be held responsible,



who has done things wrong. So there is a follow-up mechanism there.

All these measures are in progress. Prof Fawell has also affirmed that the eyes are on the ball and these measures will be effective to deal with the problem.

I hope that the Commission would look at all these follow-up measures positively, in minimising the chances of recurrence of this unfortunate incident.

There are three more things I would like to respond to. ACQWS. The Commission has heard from Mr Wong Bay. You remember there was a paper in 2002. The ACQWS, Mr Wong Bay, talked about maintenance. He was in the management division. So, when he took part in that committee, he took part in the committee from the user's point of view. At that time, we saw that the focus of discussion was discoloration of the drinking water.

Some may say that Mr Wong did not convey the situation to the Housing Authority. I think Mr Wong didn't consider that to be the focus of the discussion, because the focus of discussion was on discoloration of water. So it is at least understandable that he didn't click.

CHAIRMAN: Let me say this. I understand the focus was on that. But the maintenance of copper pipes was nothing new. To a certain extent, you may say that compression

joints were used. You cannot say that because you use compression joints and you are dealing with rusty pipes and you would be thinking in a linear way and you wouldn't think of anything else. Of course, I understand what you said, but the thing is, when you are thinking, you are not thinking in a linear way.

MR HO: Whether someone would click or not, your eyes are on the ball. I am not saying that one should not be more far-sighted and think about more than this. But when someone looks at this, and maybe he hasn't clicked --

CHAIRMAN: Let's come back to Prof Fawell's point, "(in English) ought to have clicked."

MR HO: This is something -- when you talk about "(in English) ought to" or "(in English) ought not to", I want the Commission to look at all this background information. The situation one finds oneself in. So, in apportioning the responsibility, one has to look at this.

COMMISSIONER LAI: If you extend this concept, this unawareness concept, if you extend this extensively, you don't have the awareness, you didn't recognise all this, that would be very dangerous, wouldn't it?

MR HO: In your sphere of work, you should have a high awareness. Like, for instance, in terms of construction, the Housing Authority should maintain

a high awareness. But this is the ball not exclusively in the field of the Housing Authority. You may say that they could have heightened awareness. With the benefit of hindsight, certainly they could have enhanced their awareness. But at that time, it is understandable that the awareness is not as high as it is now, when all the eyes are focusing on this particular issue.

COMMISSIONER LAI: I have been with the government for so long, and when I go to meetings on behalf of the department, I wouldn't be just looking at my own department; I would look at all the other areas as well.

MR HO: I don't object to that. I am just saying, at that time, why the awareness regarding those two paragraphs in the paper was not high, it's because the focus wasn't on overseas experience. The focus was from a user perspective. There was cloudy water --

CHAIRMAN: That's a very narrow interpretation, we feel. The cloudy water, as you said, what was the reason for that? That was heavy metal; am I right?

MR HO: So if you have such a narrow perspective, tunnel vision.

CHAIRMAN: I understand what you are saying, but we are just saying you shouldn't act that way.

MR HO: Of course now, in hindsight --

CHAIRMAN: You can't say that either. That doesn't work in

public administration. Put simply, if you are sent to international conferences, there isn't anybody who understands everything in Hong Kong.

MR HO: It's also a fact that the ACQWS, the majority in attendants were from WSD, and if that was a consideration, then if there was some reminder, then it might have clicked amongst other attendants.

Another simple response is Mr Martin Lee spoke about unannounced results regarding discarded samples.

I would like the Commission -- in C21, there was a press release. There's a very detailed explanation.

CHAIRMAN: It wasn't very detailed, actually. It's very general.

MR HO: I feel the Commission's focus is also not on the discarded samples.

CHAIRMAN: Well, we do not look into that in great detail.

MR HO: So there's no evidence to reach any conclusion regarding conspiracy theories. Regarding the unannounced results, if you flip over to the second page of the press release, you will see why some results were not announced, because that was not directly involved with the residential blocks. It involved some commercial blocks.

So the so-called conspiracy theory, we feel that's not relevant.

Another point is yesterday Mr Pennicott talked about delivery notes.

CHAIRMAN: I just want to remind you that on this issue --

MR HO: I don't think it's a big problem. I recall there were four bundles and I had invited --

CHAIRMAN: (Chinese spoken).

MR HO: I won't delve into that. On Day 26, that's 16 November, pages 18 and 19 of my LiveNote transcript --

CHAIRMAN: I understand.

MR HO: Then lastly, if the Commission would allow me to speak on behalf of the Housing Authority, I would like to make certain statements. After the excess lead in water incident occurred, the Housing Authority spent a lot of effort on remedial effort, and some public rental housing residents were affected. The HA are very concerned, and we understand that for the regulatory authorities and regulatory mechanisms, there are deficiencies, uncompliant solder material could be used in projects. We express our regret, and we look forward in the future that the HA, the WSD task force on excess lead in water, we hope that all the measures they propose, we will look into that and we will follow up on it very seriously.

The Housing Authority will co-operate fully with the

government to implement all remedial procedures regarding water quality monitoring, and we will also do our utmost to prevent a similar incident from occurring in the future. Aside from complying with all relevant procedures, the HA will regularly update and review its procedures.

Thank you, Chairman.

CHAIRMAN: Thank you. Okay, let's take a 20-minute break at this point.

(10.53 am)

(A short adjournment)

(11.18 am)

Submissions by MR SHIEH

MR SHIEH: Chairman, I will be providing the closing submission for the Commission of Inquiry. A lot of times, even though the position might be clear, it's still worth repeating because we have media and members of the public in attendance.

What is the relevance of counsel's submissions?

Counsel's functions and responsibilities are different from the Commission. The Commission, they will have to draft the report, they will also have to make recommendations, they will have to weigh evidence, so all this is the Commission's chairman's decision, and the Commission's counsel team, we have to provide all

sorts of legal assistance. For example, when we question the witnesses, when we need the Commission's Chairman or the Commissioner to ask questions, and we are an arm of the Commission.

We also conduct legal liaison work, and of course, in our closing submission, we are not a mouthpiece of the Commission. We are not the mouthpiece. We are independent and we are putting forward some submissions regarding facts and evidence.

The Commission will have its own view, because the chairman -- they are part of an inquisitorial system, and we know that they are very proactive to deal with a lot of questions.

So today, the submissions that we present today, you can accept or not accept them. I need to put that in the beginning. We need to state the difference in our roles, because the media will ask questions, and I think when the Commission drafts its final report and presents it to the CE, this will be our procedure.

So that has clarified our counsel submissions and our standing, our status in the whole proceedings.

First of all, I have some opening remarks, some general remarks. First of all, a lot of commissions of inquiry, they were convened because of issues of major public interest, and a lot of public bodies or

government departments, they have some measures, and these will be under very close scrutiny. They would be examined closely by commissions. There would be sharp questions, some words have been exchanged, and people might feel that they were incompetent or evil.

But I want to state in the beginning, I have heard the WSD and HA submissions, they might have a similar concern, so I want to clarify this in the beginning. We should not forget the two government departments, the WSD and the HA, in general situations or after the excess lead in water incident, they have expended a lot of effort. For example, the WSD, we heard the colleagues say that they had to take water samples to the early hours of the morning. The Housing Authority also did a lot of work; Mr Ho has elaborated on that.

The water quality up to connection points in Hong Kong, the HA, in building public housing, the quality and efforts cannot be detracted because of this incident, no matter what the Commission finds.

So these two bodies or departments, we should not diminish their efforts, and the public should not feel otherwise. So we need to be fair to them.

But, given that, we do have blind spots in many institutions, so if there are errors arising from these blind spots or criticisms arising, then my team's



submission is that the relevant government department, they should not be overly defensive, they should not feel aggrieved, because a lot of times I hear the WSD and HA submissions, even when they had witnesses giving evidence, when their true emotions showed, they seemed to be -- I don't want to say shirking responsibility -- but it seems like they are saying to each other, "Why do you criticise me? Why don't you examine yourself?"

So I want to point out, in this incident, we don't need to focus too much on blame or negative criticism, or to put it bluntly, perhaps the WSD and HA might have an internal dialogue going on, "Are you going to apportion 60 per cent blame on me and 40 per cent on yourself?"

Counsel's view is that this is not a civil lawsuit. If there's negligence and so on, then the courts ultimately will have to apportion the blame. They have to quantify the responsibility and a certain party might have bear 65 per cent and another party 35 per cent. But in this Commission, they might have to make some specific decisions or recommendations, but it's not necessary -- and you might not even have the intention to quantify or compare levels of responsibility, because I think in this incident both parties, the WSD and the HA, each side have their own deficiencies, and the

Commission would explain these deficiencies, but I don't think we need to compare such deficiencies.

These two public bodies, they might have received instructions that they should not put their case so transparently, but I can be transparent. That is my privilege; I can be very blunt. They might not admit to it, but at least they are not objecting now.

DR WONG: (Chinese spoken).

MR SHIEH: My main point is the Commission, when they draft their report, there is no need, and I would like to highlight this, this is not a civil lawsuit, so there's no need to make any comparison or apportion blame. But of course, if there were some special circumstances, then if the Commission feels that it's necessary, if one party has aggrieved another party or if one party has placed trust in one party and the other party has not lived up to that trust -- otherwise, my submission is that it's not necessary to quantify responsibility.

Just now, Mr Ho provided a lot of interesting and colourful analogies, and I think that the Commission, in considering counsel's evidence or submissions, should not be swayed too much by these analogies. We have heard "eyes on the ball" just now. You can have a lot of derivations out of that. Is there one ball or ten balls? So these analogies might not be very helpful.

Prof Fawell, when he gave evidence, he would have used these terms. But we don't need to pinpoint which ball we are talking about. It's not like a game, a soccer game, where there's only one ball and all 11 players are focused on it. So we don't need to struggle over these analogies or examples.

Another point is, and it's applicable to the HA and WSD, a lot of times we would feel, when such an incident occurs, do heads need to roll; is there a need for personal accountability? Let's say if a person is given a checklist and you had neglected that, or there is a box that you need to check and you didn't do that -- well, did these incidents, did that happen, or do we have some high-level negligence?

I think we are not concerned where there was gross negligence, or whether there was a box that wasn't checked and they didn't do so, so this person, this officer, he needs to be reprimanded and heads need to roll -- no. In this incident, we feel, if there's any deficiency or negligence, it was a matter of collective mindset. There was just no general atmosphere or understanding that certain things should have been done.

So the issue is the Commission is not responsible for looking into matters of political accountability, so incumbent officers, what political agenda they have,

that is not our consideration.

So, after hearing or reading Prof Fawell's report, we know that it wasn't one or two officers who were negligent; it was a whole mindset, a whole collective mindset, work culture issue. Prof Fawell said there was no overarching consideration, that we needed to highlight public health -- we needed to pay special attention to public health risks.

After these opening remarks, I need to move on to some specific topics.

The first, regarding the issue of insufficient awareness. Just now, Mr McCoy and Mr Ho had dealt with that. In WSD's submission, they referred to four levels of awareness, and I am inclined to agree with Mr Ho. We don't need such a complex description. The issue was, we are not saying the WSD and HA did not know that lead was potentially harmful to health. The WSD knows. The HA also know that lead is problematic, though, when the HA drafted its specifications, somebody took it from obscure table 6 and highlighted that.

So, in the two departments, someone knew about it, otherwise it wouldn't have been written in. Otherwise, there wouldn't be a pledge to measure up to the WHO Guidelines. Whether this is right or wrong is another matter altogether.

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

B Commission of Inquiry into Excess Lead Found in Drinking Water Day 67 B

C Where does the problem lie? It's not as if nobody C

D knows about the harmful effect of lead. I don't think D

E you can use the word "(In English) awareness". It is E

F not so much "(In English) lack of awareness"; I think it F

G should be said there is a "(In English) lack of a sense G

H of alertness to the risk that people would break the H

I rule"; there is a lack of alertness. I

J You may say this is a matter of semantics. J

K Awareness is awareness of the fact. Are they aware of K

L the fact that lead is harmful? They also know that L

M there is such a prohibition; they are aware of that. M

N But they are just not alert to the fact that N

O somebody might break the rule. Despite the prohibition, O

P they just take it for granted that with a prohibition, P

Q people will just follow. Q

R This is from Prof Fawell. There is also a lack of R

S awareness of the rationale of the legislative S

T provisions. They know that there is a rule that leaded T

U solder should not be used. But the government officials U

V are looking at thousands of contractual terms every day V

and their minds will get numbed. They are faced with so

wouldn't click that this has something to do with public

health. They know that the rules are there, the

prohibition is there, but they don't seem to understand

that the rationale of the prohibition has to do with public health.

As Chairman said a moment ago, if they knew that it had to do with public health and the consequences would be huge, then there would have been some impact, and they may just look at the clauses and they are just going through the motions, and that kind of mindset certainly contributed to what happened.

The Water Supplies Department mentioned Prof Fawell's evidence, and I'm sure the Commission would remember, "(In English) A spectacular degree of foresight", that particular paragraph.

When I cross-examined the witness, I asked Prof Fawell -- I'm not going to -- that's paragraph 10 of the WSD's submission. When I cross-examined, I clarified that in fact what he said was that if you ask the Water Supplies Department to test the tap, then you need 20/20 hindsight. In the final inspection, Prof Fawell made it very clear that -- this is what the Water Supplies Department said -- the most important thing is to control the kind of materials that they use, it would be far better than conducting the checking at the end of the process, because it would be far more costly to do so, and there is an assumption that you are successful in controlling the materials that are used,

if you can control the materials that are used. But if there are loopholes, if there are flaws in the control at the beginning, then the whole assumption may not stand.

To a certain extent, this also applies to the Housing Authority, whether we are talking about the inspection of buildings or whether we are talking about the water, you have to sign part V of WWO46, and if you count on the final testing to identify the problem, it may be too late. It would be far better to control the situation at the material stage.

The two departments have their own opportunities to do so. For the WSD, it is WWO46. For the HA, it is form 6210. I cite these two examples because these are part of their existing procedures. With these procedures, you could have included the soldering materials, and this is not impossible to do so.

We are not saying that they should create a new system. They have existing forms, they have existing procedures, whereby they could have accommodated the soldering material. WWO46, if they specify FRY unleaded solder, then the awareness could have been heightened. Under 6210, when materials are delivered to the site, if it is tested to be FRY, then it would be okay, and I think these are opportunities that could have enabled

them to prevent the occurrence.

So these are missed opportunities. But why did people miss the opportunities? WSD and HA did explain in the witness stand why they formulated 6210 and WWO46 and why they didn't include solder materials. The HA said that they were working on the basis of risk-based approach. WSD focused on functionality, whether there was any misuse of water, and so on. They have their own reasons. But were they too parochial at the time? It's not the case that there is a form to check solder and they didn't check it. No. But day one, they ought to have put this into the form, and there is no need for them to be so parochial, to simply talk about the functional aspect, and they are adding this after the event.

Our submission is that in relation to what Prof Fawell said, the most effective way to deal with the health issue would be to monitor and control the materials that are going to be used. That's the step that has been missed. And they do have existing forms.

The second subject I would like to bring up is for the HA, they could have another opportunity in 2005. For public rental housing, they allowed copper pipes to be used. Consideration at that time was given to this, and that would have been an opportunity for them to



specifically look at solder materials. They could have done more.

The Housing Authority obviously didn't spot that. They didn't make any contractual requirements regarding leaded solder, or they didn't make any requirements regarding testing. I think that has to do with the mindset. We cannot lay the blame on one or two officials, because given the mindset, they are working under this collective mindset, it's just like a soccer team, if the coach were to say that you just keep your eye on the ball and you don't mark the players, I don't think you can blame the players. I think this is a mindset that has been inherited from the past.

Let me turn now to the sampling of water. That's towards the end of the Commission hearing. This is the area that we set great store by. The coalition and the WSD have made submissions, and in our written submissions we have also covered this in detail. The Commission has also asked many questions. I don't think I need to repeat everything that has been said, except to highlight one or two points that remain controversial.

First, conspiracy theory. There are a couple of aspects. Mr Lee SC suggested that the government is trying to lower the temperature, trying to minimise the

panic. At the beginning, in the 1990s, there was a pledge of the WSD to follow the WHO Guidelines. We believe, we submit, that for them to pick 10 as the threshold in the mid-1990s, it wasn't on the basis of any conspiracy theory. There wasn't any leaded solder problem.

CHAIRMAN: You talked about the WSD, wholesale incorporation.

MR SHIEH: Yes. The guideline value, they look at the WHO guideline value of 10 micrograms, and then they move on to the provisional guideline value. But at the very beginning, there couldn't have been any conspiracy theory. You could have said that they are just replicating something from the WHO.

The more specific allegation regarding the conspiracy theory from Mr Lee is the sampling protocol. Mr Pennicott also talked about this. It was done in a very urgent way, and the WSD was asked to assist in the sampling of water. The WSD was asked to test the water. They probably didn't have time to come up with the least damaging protocol, and the WSD tested the flushed samples.

Mr Lee made a strident allegation. We know that during the Inquiry, the WSD was reminded, "Even if you have your own rationale, there's no ISO requirement, you

C should still comply", or perhaps Mr Lee always says it  
D should be described in the joint preliminary report,  
E because from day one, the WSD, complied with their  
manual.

F But after the incident, how come the WSD -- why do  
they still insist on not sampling the first-draw sample?

G Mr Lee said that, was that because there was

H a high-level decision, that they deliberately did not  
I want to find out? They didn't want to find out these  
inconvenient truths?

J So without doubt, superficially, it seems like some  
K people might come up with these conspiracy theories;  
L especially given our current political climate, you  
cannot blame them. Prof Chan Hon Fai, during the  
Inquiry, he had the foresight --

M CHAIRMAN: 26 August.

N MR SHIEH: There was a meeting; Prof Chan had reminded us.

O And, Chairman, you will recall that, on 29 February,  
P at pages 101 to 102 -- well, if we were to draw  
conclusions from that, then the Commission needs to be  
Q very careful, because this is just a doubt or  
R a conjecture. Some people say you can't expect the  
government to admit to that. These allegations are just  
S inferred. But we have heard the WSD witnesses. We have  
T seen them give evidence. We've had the opportunity to

observe their attitude.

So I would urge the Commission to consider Mr Martin Lee's allegations -- when you consider them, you could also consider the possibility that it might not be a high-level, deliberate tweak of numbers and therefore they insisted on not taking first-draw samples.

The language that we use in our submission is that maybe it's a rigid and stubborn form of crisis management. They might be defensive. That is, they want to defend their initial position. This occurs a lot of times. They have taken a certain stance initially, and subsequently they find that when it's challenged, and at the time, we see the WSD witnesses, they are technical officers, they have a technical approach; they sincerely have faith in their system. They sincerely believe that technically their interpretation of the rules is correct. You cannot, just because of that, label them as evil.

But in our Commission of Inquiry, we are looking at a broader picture. We are not limited to a technical interpretation.

Of course, the Commission, you have heard our submission that the WSD insists on taking fully flushed samples, it is based on ISO standard. It also depends

on the purpose. If your purpose isn't correct, then your sampling process will not be appropriate. So that might be a legitimate difference of opinion. You have reminded them, they could just be stubborn, but should we accept Mr Martin Lee's allegation? Mr Martin Lee says that it is a high-level conspiracy. We have reservations. Before the Commission accepts Mr Martin Lee's allegations, they should think it through carefully.

So, when we deal with politicised issues, you may not be dealing with it on a frequent basis, so when you encounter it -- I don't know what you will be thinking in your mind, but you might not be able to look at it from a macro perspective. It might be just government culture. When there is any change, they might have to go through a lot of internal considerations, and so on. So we see the officials, when they are on the witness stand, when they are questioned, "Can you change the way you take samples?", they always respond that they have to go back and study that. You will say that they are very technocratic, they are very stubborn, but can you elevate that to conspiracy? That's a separate issue.

Of course, the Commission could choose to, in their report, provide fully reasoned recommendations and the WSD can consider that. Chairman, whether the WSD

accepts or declines, that is the WSD's decision and they have to exercise their own political wisdom.

Prof Fawell's evidence was very detailed. He explained the WHO provisional 10 microgram per litre guideline, why it was provisional; he told us it was not health-based anymore. That seems to be a somewhat different interpretation from the WSD. The professor forward a 5 microgram level. You can call it an action level. The WSD, in their submission, they said they would consider their action level. But whether we accept a lower number for an action level?

Even if we do accept, and let's assume that the WSD's understanding is correct, that is a 10 microgram level is correct, our submission is that just relying on flushed samples to determine whether it complies with 10 micrograms, that might not be comprehensive or appropriate, because the WSD say the reason they use flushed samples is that it's representative, because it represents an average sample or a reasonable sample of a person's daily consumption.

But I think the expert witness said that there's no such thing as a reasonable consumption. Different people have different habits. So the WSD should not say that there's a so-called reasonable person who would have certain habits and they would only look at that

type of person's consumption. That would lead to overexposure to lead. Prof Fawell also referred to worst-case scenario, if you take the first-draw sample, but we do have people who consume first-draw water. Prof Fawell also said that people should change their habits. But after the issue has died down, people might have forgotten about the incident and they might revert to old habits.

So just urging people to flush two to five minutes, and therefore we can take flushed samples, this might not work.

Another smaller point would be about enforcement. When I questioned the WSD witness, I had asked, "So whether you use 10 micrograms per litre, even if you get a reading of 5 or 7.5, it's because there was leaded solder used in the system, and you have definitely broken the rules, because if you comply with the British Standards it shouldn't have such a high reading, even though it's not more than 10." So that gives rise to a question regarding enforcement.

The WSD admits there are no guidelines on how to deal with leaded solder being used. They said they had to go back and think about it. Because I had asked the witness, "What threshold does the WSD apply when they want to take action against licensed plumbers?" The

only testing was the 10 microgram threshold. Even if you don't cross the 10 microgram threshold, you might still have used leaded solder.

So the guideline is that the only information they have is the 10 microgram level. But that deserves a review and needs to be explored again.

So regardless of whether 10 is health-based or not, you shouldn't have lead in your system in the first place. Somebody has used non-compliant material.

CHAIRMAN: The Consumer Services Branch and the Water Science branch are two separate departments.

MR SHIEH: The Customer Services Branch, the only data they have is 10 micrograms, so they need to review that.

This morning, Mr Ho mentioned that specifically, that is, the discounted samples. The discarded sample, it occurred at a later stage, where Prof Lee said that because of various reasons, these samples, they weren't classified under the affected estates group, and there was a press release dealing with that.

Because of the chronology of the Commission, there were a lot of issues, a lot of disputes and a lot of evidence that needed to be handled. So whether these 11 samples and why these samples were discarded and not used -- we didn't summon a witness for each sample. It was dealt with by way of a press release, and we didn't



take evidence regarding these individual samples. We are not going to do so, on whether we are going to accept or not. It's nitty-gritty details and it's not within the ambit of the Commission. As I said before, we are looking at the big picture.

But we do need to take note that since we have these discarded samples, this outstanding problem, the HA knows that they need to give an explanation, so we can only wait for the HA to provide further disclosure or explain why these samples, even though initially they were above the threshold, but ultimately they weren't able to classify these as affected estates.

This is related to the public impression. They see a big figure and they would question, "Why isn't my estate included in the affected estates?", and they would think there is a conspiracy going on. So perhaps we need effective communication with the public and residents why those samples do not represent their estates. So that perhaps is not what we can deal with through the evidence that we have in the Commission.

Section 15 of the Waterworks Ordinance relates to licensed plumbers. In our submission, we have covered this. 218 to 221. This is something that remains controversial.

I have read Mr Wong SC's interpretation of

section 15. He said that if we can interpret the provision more loosely, then we would have achieved the purpose. When it comes to actual operation, we understand that if we require the licensed plumber to do everything personally, then it would give rise to serious problems. It may be when this was drafted, this wasn't thought about, and during the drafting stage, there was an assumption that obviously the licensed plumber could have delegated the job under supervision.

So section 15, the wordings adopted there cannot cater for this kind of interpretation. However, the Commission may not give any authoritative judgment regarding the interpretation of section 15, because we are not here trying to say that someone would have to be penalised in violation of section 15.

During the course of the hearing, the WSD accepted that the wordings in section 15 are undesirable and they have to be revisited. I hope that the Commission will make recommendations regarding the wordings of section 15. There is an urgent need for some rectification, because someone is potentially violating the law and they are not prosecuted, because the WSD interprets section 15 in a particular way and that's why they didn't take any enforcement action. But in a place, in Hong Kong, where we have rule of law, this

is not desirable.

We should not count on the interpretation of one particular party and not take enforcement action. In future, if someone were to come up with a different interpretation, and throw the law at the relevant party, then they would be caught and this is not desirable. So there is an urgent need to clarify the wordings of section 15. If the WSD has some interpretation, and if they can overhaul that particular section, it is perfectly within their power to do so. I hope the Commission would make some recommendations there.

Section 15 may not have directly caused what happened, but in our terms of reference, we have to look at the entire supply system.

CHAIRMAN: To a certain extent, this is related. I agree that this is not directly related. You probably remember that the task force -- I can't quite remember -- first of all, Prof Lee touched on this. Workmanship is one of the contributing factors. If my memory serves me correctly, the task force report also mentions that the incident has to do with workmanship.

In this sense, it has to do with who does it.

I agree it may not be directly related. Obviously licensed plumbers can do a bad job also.

MR SHIEH: Skilled workers can also take on the job.

CHAIRMAN: Exactly. Whether the workmanship is good or bad can be attributed to anybody. The thing is who should be doing this in the first place. So, in this sense, if you say that section 15 has nothing to do with it, I beg to differ, but I agree, to the extent that at this level there is a big problem with section 15, and there is indeed an urgent need to clarify the matter or to tidy it up.

MR SHIEH: There is another point. Other than solder materials, would other components be liable to leach lead, that would cause an excessive level of lead? Shui On and China State also advanced this argument.

Mr Wong SC for the WSD also advanced an argument, and I tend to agree, you simply cannot take two components, a tap or fittings and a joint, and in a lab condition, it simply doesn't make sense to test which would leach more, because this is not consistent with the actual situation. Prof Lee made it very clear that the whole system is a pretty dynamic situation. There is a lot of randomness there.

Prof Lee, in his report, also said -- he used the computational fluid dimension model, because he took the leaching rate from different components and fed them into the leaching rate and came up with his observation. So Prof Lee, in his report, devoted a paragraph to the

task force. In the task force report, there is a paragraph regarding the leaching rate for different components. They used mathematical modelling to determine which leaches more between the solder and the components. Prof Lee expressed reservation about this approach adopted in the task force report. Prof Lee also agreed -- in Shui On and China State's submissions, obviously there could have been some other reasons, but they said that solder materials may not be the sole culprit; there could have been other culprits. In their submissions, they didn't address isotopic analysis.

One of the reasons supporting the task force argument is the isotopic analysis. Prof Lee produced the report. He used the control samples. He used components --

CHAIRMAN: He used similar valves without the leaded component.

MR SHIEH: He had a control sample that didn't show up anything undesirable.

So these are very cogent evidence. The problem lies with the use of leaded solder.

CHAIRMAN: Prof Fawell also touched on this.

MR SHIEH: In our submission, we have already mentioned this and I don't propose to repeat it. Mr McCoy this morning made the point about the cadmium. In fact, Prof Fawell,

paragraphs 29 and 83, also mentioned that he would suggest the WSD conduct a review; in testing the metal, they should overhaul the system to determine what metals should be tested.

We would invite the Commission to consider paragraph 83, and that includes cadmium.

Regarding the main contractors and the subcontractors and the role thereof, we have something to add here. In these open hearings, the focus of attention is on the public bodies, the government departments. We are looking at the broad picture, to see what inadequacies there are. Further down the line, we'll also look at the details, but proportionally, we would go into greater detail -- well, there is no need for us to go into that much detail, because we have to strike a proper balance here. The Commission must be aware that, at the end of the day, there may be civil suits that would arise from it. The contractors might be filing suits against another one regarding what they are supposed to know or what they have done on purpose, and so on.

If the Commission feels that there is a need to make specific findings in this regard, then it's up to the Commission, but we have to consider that we are looking at the big picture. Is it necessary for us to look at

each contractor and each subcontractor and find out how much each and every one of them knows about the situation, or is it the case that the Commission would look at the reasons why they used the wrong materials? I think that has highlighted the risks of using the wrong materials. Some used the material wrongly deliberately; some used the materials through ignorance. Or should the Commission look at individual contractors in such detail? It's up to the Commission to do so.

But I would suggest that there would be a lot of litigations that might be arising, and these allegations are made with a view to filing litigation. If the Commission sees the need to make individual findings in detail --

CHAIRMAN: Fine. But we cannot use the evidence.

MR SHIEH: Psychologically, that would make a difference.

There are many issues raised at the Commission. We can see that they have their eyes on the balls; the balls will come later.

CHAIRMAN: But there is a declaration under the COI Ordinance, we cannot use this evidence.

MR SHIEH: For main contractors and subcontractors, I would like to make some supplementary remarks here. For the main contractors, Mr Ho SC said a moment ago that under the contract, they have to use compliant solder

materials. In our submission, paragraphs 136 to 141, we look at the procedures for checking the materials, paragraphs 136 to 141.

A long story short, the main contractors, to a certain extent, do have their own checking procedures that can be applied to the materials. Either they didn't follow these procedures, or the forms or the checklists didn't include the solder materials, so that's why I mentioned "missed opportunities" there.

So, for the four contractors, we refer to their manuals, checklists. Some might have checklists but they weren't applied.

Regarding subcontractors, plumbing subcontractors, there is one point regarding some subcontractors that you might be interested in. Was there any incentive for them to save money? Did they deliberately use non-compliant soldering material? We know there are some plumbing subcontractors, Ho Biu Kee, Golden Day, Mr Mok and Mr Siu. So, generally speaking, broadly speaking, using leaded solder was cheaper, so they had a profit motive. They deliberately used that material.

So all the plumbing subcontractors -- they deny that, of course. We have a table summarising their evidence. Mr Ho Man Piu of Ho Biu Kee, he said he didn't know the difference between leaded and unleaded



solder. Mr Siu said they didn't know, and Golden Day, Mr Cheung Tat Yam, said they knew of the specifications, but he didn't know that there was leaded solder on the market.

So, to a certain extent, one view was that you could say that they had to know. They must have had a price differential motive and chose to order leaded solder. But this across-the-board judgment, or profit motive could be an incentive. When we consider evidence, we have to consider the profit motive. But based solely on the profit motive across the board, having an across-the-board judgment, that because of money they deliberately chose a cheaper leaded solder, that would be stretching it a little bit.

As Prof Fawell said, "(In English) Many people can't tell leaded solder from unleaded solder." Education, work experience and all these also contributes to understanding, and everybody would be different, so you cannot make this general conclusion that it was based on money incentives.

So, using leaded solder, there's no denying that. So, when they object that they deliberately did so, the defence -- so how do they reduce their blameworthiness? Well, whether it was deliberate or careless, it depended on their state of knowledge. So whether they knew or

not -- Chairman, you would know, that would be very hard to define.

CHAIRMAN: Criminal court judges do that all the time, but for civil --

MR SHIEH: Of course, we have to consider evidence. We have motive, a profit motive. That's one consideration.

CHAIRMAN: You just talked about profit and price, but there's another one. That is the ease of work. There might have been a combination. In some situations, the ease of operations weigh more than profit, because they weren't in a position to profit from cheaper material.

MR SHIEH: Mr Ho Man Piu, in his evidence, said that using unleaded solder, on average, might not be cheaper, might not be more expensive.

Some people will say that you should not think it is cheaper per unit, but you also have to consider wastage, it has a lower melting point and there is more wastage, and so on. So everybody has a different explanation.

One party can say there's a profit motive, another party might say it's easier to use regarding workmanship, there's even more views. Some people talk about different habits, some people cut it into strips, some people work with rolls. So we need to consider all these different explanations -- do we have a clear-cut motive?

We also need to consider, we have bills provided by Prosperity. We can see each contractor and their site -- their ordering pattern, their procurement pattern. If there were a profit motive, then theoretically, if a box -- well, of course if ordering UK50 it's cheaper, then the policy would be to order that, but now the indisputable fact is some plumbing contractors, for example Ho Biu Kee, and even today Mr Mok, the estates he is responsible for, some plumbing subcontractors had ordered a mixture of FRY, the unleaded solder, and the UK50 solder.

So sometimes we need to test these propositions. If they were cost-driven, then they would have ordered the cheapest; why would they order FRY? Of course that would give rise to a lot of other theories. Did they want to order the cheaper or did Prosperity run out of stock and they had to order two rolls of FRY? Of course, we have some evidence. Prosperity says that they wouldn't do so. And the "affected" plumbing subcontractors, they said no.

Chairman, you will remember that the procurement staff, the practice was that if the supplier ran out of stock, they could not substitute for something else. Of course, we could take a sceptical approach, but the indisputable fact is we did have a mixture of solder,

leaded and unleaded, and it also could have been possible that there were other reasons. Maybe they had to rush through the project. There could have been even a third reason, the third reason being maybe the people were reckless; they would order whatever came to mind.

So, for various reasons, we have to include all these into the melting pot. We have to consider all these reasons. Did they deliberately order lead solder? Did they know that they couldn't use leaded solder, and did they take a risk and break the law?

So, if we run through the contractors one by one, Ho Biu Kee was responsible for Kai Ching, and if you look at the Prosperity documents, they had a mixture of solder. They had FRY and UK50. Ho Biu Kee provided their own explanation. They said Chan Siu Wah suggested they use that material.

Well, Ho Biu Kee is unique. We have a control sample. We know that in Shui Chuen O Estate -- we don't have their purchase orders, and our submission is if it's fishy, why don't they ...

So putting that aside, Ho Biu Kee were responsible for Shui Chuen O, and they had ordered unleaded solder, and that was prior to the excess lead in water incident being exposed. So it wasn't a remedial action; it was a contemporaneous action. They did order unleaded

solder and we can say that's in favour of Ho Bui Kee.

So you might have doubts, but it seems like there wasn't the policy that they should save money and order the leaded solder only.

CHAIRMAN: Well, no. Just for example, in Kai Ching Estate, you know that they had subcontracted the work, and it involved a person, Chan Siu Wah, and Chan Siu Wah had to subcontract further, and there was a bonus system.

MR SHIEH: I think our submission has dealt with that. This subcontracting was for two blocks, but the affected estate was not just limited to Chan Siu Wah's project. So it might have been his material could have been used in another project.

So, for various reasons, it has given rise to a lot of possible theories, but I want to emphasise that in our facts, we have so many possibilities. We have so many conspiracy theories.

CHAIRMAN: I don't think these are conspiracy theories.

I am just dealing with this one issue. In these cases, how many of them are due to primary facts and inferences and whether you are prepared to draw inferences from these primary facts.

So it's not purely speculation and we won't speculate. If we are to make a ruling, it will be based on accepted facts, and in these accepted facts we will

draw reasonable inferences. But we will bear in mind,  
you also need to bear in mind that this is an inquiry,  
and our standard is not to go beyond reasonable doubt.

MR SHIEH: We have to rely on inferences; that's  
indisputable.

Are the undisputed facts sufficient to support  
further inference? So the Commission would have to  
apply common sense. Of course, the profit motive is  
always a possible motivation.

CHAIRMAN: Especially in a commercial society.

MR SHIEH: I already stated that in the beginning.

But we also need to consider other factors.

Ho Biu Kee have other projects where they used unleaded  
solder, so that might indicate there is no overriding  
policy where Mr Ho said that they would order only the  
cheapest material. But do we have other scenarios?

When it's subcontracted, then the person ordering  
material -- because Mr Ho Man Piu would not procure the  
material, so the person doing the hands-on work, when he  
places the orders, would he procure non-compliant  
material? We already spent a lot of time to look into  
that evidence, and the Commission also remembers that  
part of the evidence. There were two blocks that were  
subcontracted out.

Now, coming to Golden Day, there's a twist in the

story. We know that they forged the document. That wasn't causative, it was after the fact; it was a remedial measure. So whether there was forgery -- but the fact is they still used leaded solder. So this forgery, there are a few angles that we need to consider.

First of all, was it Ms Lam's version or was there a wider-scale forgery, and why did it occur? So the only admission we have is from Ms Lam. Mr Yung said that the boss wasn't in Hong Kong, and when Ms Lam gave evidence, she told us how she committed the forgery -- our submission has dealt with that. The language is not clear. We were even wondering whether she committed that in the first place. She didn't present a very clear story.

So do we have sufficient evidence to come to a finding as to who did what and what were the motivations? It's slightly ambiguous. If you don't believe Ms Lam, you can discount her evidence. But just because you don't believe someone, you cannot prove the contrary.

CHAIRMAN: I understand what you are trying to say. When you consider this, you have to consider all the circumstances. We always give direction to the jury like this: You don't have to trust the witness to the

full; you can choose to trust a part of his testimony,  
and he can lie about certain things, like you ask your  
daughter whether she has done her homework, whether she  
has eaten.

MR SHIEH: It is true that she has eaten but not so much  
about the homework.

CHAIRMAN: Exactly.

MR SHIEH: She may cover up by telling a lie.

CHAIRMAN: So, objectively, there is no dispute that the DNS  
were forged. The question is, one of the issues is,  
whether she forged the delivery notes herself. She may  
be doing cut and paste and she wasn't being coherent,  
and then you try to think how many people were there in  
the office, there were only two people in the office.  
If it wasn't her, and she made incoherent remarks, could  
it have been that she asked someone else, someone  
unidentified to do it, or she went home and she did it  
on the computer, or what? There may be some speculation  
there. After this was done, someone collected it, and  
so on.

For the part that we don't have primary facts to  
support, we won't speculate, but when we draw inference,  
we will do it on the basis of accepting primary facts.  
There are a couple of people in the office. The boss is  
not there; Mr Yung was out in a meeting. Basically,



they were down to two people in the office at the time.

If it wasn't Ms Lam --

MR SHIEH: Well, the Commission has to consider the purpose of the Inquiry. Certainly someone did it in Golden Day, whether it was on the instruction of Mr Cheung or someone stuck their neck out.

CHAIRMAN: Then you have to consider Ms Lam, if she was instructed by Mr Yung, or would Mr Cheung have given the instruction? We don't have sufficient evidence to support that. That's quite another matter altogether.

MR SHIEH: So in Golden Day, someone gave the instruction, someone took the decision. What is the relevance? The relevance is they forged the DNs to cover up something. What are they trying to cover up? Ms Lam of Golden Day -- Golden Day said that they didn't realise they were using non-compliant solder materials, so Golden Day's theory was that Paul Y made some noises and then they discovered. Mr Yung said you have to do something and it was after a meeting with Paul Y that they knew they used the wrong material. A more sinister inference is that they were aware of that and they were trying to cover up.

So the relevance lies with the motive.

CHAIRMAN: Yes, correct. That's one of the circumstances.

You have to consider all of the rest of the

circumstances before taking a decision, but in any event, if this has to be pursued, this would fall outside of our terms of reference.

MR SHIEH: That's why I said, on these minute details, it's up to the Commission to consider in its report whether it would adopt a big picture or whether it would look at all these details.

Golden Day, there is a motive, that they are trying to cover up something by resorting to forgery. In our submission, footnote 16, we said that for Golden Day's projects, there are certain projects in which they used a mixture of FRY and 50D. So for Golden Day, it's not the case that it is across-the-board 50D. But this is one of the areas that has to be considered. I think we have to keep everything in balance. Profit motive, certainly it's there, but why is it that there is this other situation? There is the element of forgery, and forgery might happen for a number of reasons.

CHAIRMAN: Yes, we would consider why, in the company, there was documentation; nothing, no documentation whatsoever.

MR SHIEH: Yes, the Commission will have to apply the conventional way to look at this. The Commission might need to have a checklist of all the primary facts, and on the basis of the primary facts, then the Commission might draw some inference like a jury, without "beyond

reasonable doubt".

CHAIRMAN: For the more serious allegation, the more cogent  
the evidence.

MR SHIEH: Yes. The Commission must be aware of that.

We assume that the Commission will understand that  
even for civil cases, the more serious the allegation,  
the more cogent the evidence should be.

CHAIRMAN: I have read Paul Y's statement regarding  
conspiracy to defraud. They have listed out all the  
elements, and this amounts to conspiracy to defraud, and  
so on. In respect of public authorities, this is the  
conspiracy to practice a fraud. If you look at fraud in  
the criminal context, fraud is about money. Conspiracy  
to defraud, this common-law offence, in terms of public  
authority, can be the public authority doesn't do  
something that they ought to do or something -- in that  
sense, if you know that these would be presented to the  
Housing Authority, then we don't even have to consider  
the element of profit, in that particular incident.

MR SHIEH: But it is another matter whether this has to be  
included in the Commission's report. There may be some  
repercussions. Paul Y stated this and maybe they do so  
with an eye on litigation.

There are two more smaller contractors, Mr Siu.  
There was a dramatic scene, there was a picture shown to

C him, and presumably it was Mr Siu. He was dressed in  
D the same top. He should be aware of the approved  
E material, FRY. He should be aware of that. In fact,  
F they ordered 50D, in spite of the understanding of FRY  
G being approved.

H There is some strange element here. Mr Mok, if you  
I look at Prosperity's documentation, this Mr Mok,  
J Wing Hing, was responsible for an estate -- this is  
K rather mysterious. In the invoice, it says FRY.

L I think Ching Ho Estate --

M CHAIRMAN: Ching Ho Estate, he took over from someone else.

N MR SHIEH: Sum Kee, they ordered FRY, and if you look at  
O Prosperity's invoice, Mr Mok ordered FRY. So, on paper,  
P we can see that Sum Kee ordered FRY; Mr Mok took over  
Q and ordered FRY also. Prosperity's invoice didn't show  
R any non-compliant solder materials that were ordered,  
S but in fact he used them.

T So by way of evidence, Mr Mok falls into the  
U category in which he ordered FRY --

V CHAIRMAN: He ordered FRY because, Mr Ng Hak Ming's evidence  
said that Mr Ng took him to the site and made clear to  
him that FRY had to be used.

MR SHIEH: I am making the point that for the plumbing  
subcontractors, they ordered the non-compliant  
materials, maybe it was a haphazard decision; it was

C ignorance, and they just ordered what was available, or  
D was it the case that it was premeditated, it was  
E pre-planned, a profit-motivated approach? If it was  
F motivated by profit, they could have ordered 50D across  
G the board.

F CHAIRMAN: Not necessarily. F

G MR SHIEH: There may be some other reasons. G

H CHAIRMAN: I'm not sure when people are coming to check and  
I I have to order something, to put up a show. So you can  
J see that in the middle of the list, they were all  
K non-compliant materials, but at the beginning or at the  
L end they used compliant materials.

K So, when we make the determination, we have to look  
L at the situation. It's not impossible that we cannot  
M identify something.

M MR SHIEH: Yes, we can come up with many different theories  
N why they did what they did. N

O CHAIRMAN: A criminal judge would be different from the  
P civil practitioners. We think differently. O

P MR SHIEH: We are more robust, we're more pragmatic. P

Q CHAIRMAN: Yes, you can put it this way. Q

R MR SHIEH: Mr Siu Kin Wong had fewer samples, one single  
S project. Prosperity showed the invoices, the number  
T wasn't high. There was only one unit that went over the  
U limit. U

C Prosperity, I have some submission about Prosperity,  
and it may be I can supplement at 2.30 about Prosperity.

D The coalition of the victims, there is a point that  
E they made about asking the Commission to make  
F recommendation to the government to subsidise the legal  
G fees, counsel's fees. At the very beginning of this  
H Commission hearing, we did have some discussion. In the  
I UK, there were some examples. In the UK, they have  
J their own legal provisions. The ministers did express  
K their stance that if the Commission of Inquiry were to  
L make the recommendation that the fees be assisted, the  
M government would be prepared to do so, and that's on the  
N basis of the recommendation of the Commission.

L Here in this particular case, so far, we haven't got  
M any evidence to show that the government adopts  
N a certain position. This is also not the ambit of the  
O Home Affairs Bureau. We don't know which Bureau is  
P responsible. So, if the Commission would put forward  
Q such a proposal, we don't know what the government's  
R response is. Even so, that would not affect the  
S recommendation, to a certain extent, but ultimately  
T there is no precedent and we would need the Commission  
U to consider.

S Well, not having a precedent is not a reason. If  
T it's urgent, and if the Commission feels that the

aggrieved residents in this incident, they have put forward some evidence or argument, and if they have reasonable grounds --

CHAIRMAN: You have covered all the issues they have raised, essentially.

MR SHIEH: Yes, you can say so. That's one area of consideration.

Another area of consideration would be, if we need to analyse in depth -- a lot of the questions they want to ask have been asked, but from their perspective, they could reasonably say they want their voice to be heard. How much and how long they want to ask, that's another consideration. The Commission could exercise some discretion. The Commission could allow a certain percentage and I would allow the Commission to make that decision.

So the remainder of my submission is about Prosperity, but Prosperity can only submit that at 1 o'clock, so I would suggest we continue at 2.30, and after we have read Prosperity's submission we will decide whether we have anything to add, and I will also take the opportunity to see what else I would like to add.

CHAIRMAN: Okay, 2.30. We will resume at 2.30.  
(12.49 pm)

(The luncheon adjournment)

(2.37 pm)

MR SHIEH: Chairman and member, during the lunch break we have received from Prosperity the written submission.

The area for discussion is rather narrow.

Prosperity is the supplier of the solder materials. To what extent is it involved and to what extent does it know about things? Prosperity is the supplier for most of the cases in this hearing. They supplied 50D as well as FRY solder materials, and this is beyond dispute.

One of the more important subjects for consideration is when Prosperity supplied the materials -- first of all, I must say that Prosperity made available the records, to show that these are materials that were approved by the Housing Authority, and Prosperity is aware that the HA approved certain products and they supplied the 50 per cent lead solder materials. The question is when they supplied the products, did they know that the materials were used by the subcontractors in the plumbing system?

Prosperity has always argued that leaded solder materials can be used for non-potable water systems. In our submission, we have cited some evidence. Mr Chow was asked by the chairman -- at the beginning, he said he didn't know what materials would be used. He then



said that one of the uses would be for the jointing of copper pipes for drinking water.

The Commission is aware that Prosperity should know or ought to have known that the leaded solder that they supplied would be used in the drinking water system. We can make some findings regarding the buyers, whether they would be using this for the inside system, and the Commission can make this inference in such detail.

But if the Commission doesn't see the need to name names, like the material was sold to Ho Biu Kee or Golden Day for particular purposes, and if we want to go into detail, we have to look at the quantities. If they sell in large quantities, the inference would be stronger, but if they were delivering lead solder to the sites on a regular basis, then the inference would be stronger. Even assuming the leaded solder could have been used for some other purposes, but we know that these are plumbing subcontractors and they have had dealings with Prosperity for so long and they are ordering these on a regular basis, so if the quantities are high, then the inference might be stronger, and if the quantities that are ordered are not high, then Prosperity might argue that, "How do I know? They just ordered these small quantities."

So the Commission will have to consider the

situations regarding the individual plumbing contractors and the quantities that were ordered. But, as a matter of common sense, and also based on the evidence of Mr Chow, he ought to have known that the leaded materials could have been used in the inside system.

If you look at Ho Biu Kee's submission, Ho Biu Kee said that Prosperity should have given a reminder. As counsel of the Commission -- Prosperity would not stop selling these leaded materials, but Ho Biu Kee was saying Prosperity should have reminded them -- whether there is a legal obligation on the part of Prosperity to remind Ho Biu Kee, and in the absence of this reminder, did Ho Biu Kee allow the leaded solder to be used?

The Ho Biu Kee witnesses didn't say that if there was a reminder they would not have used it. I don't think we need to make any ruling in this Commission. I must repeat that is there any legal obligation to make a reminder? I think that has to do with the legal obligation. For the purpose of this investigation, I think the Commission can ascertain the facts. The Commission might make comments regarding individual subcontractors, whether they knew about the situation, but do they have to make a ruling regarding the legal obligation to make a reminder That's another matter altogether.

As counsel of the Commission, that's it for my verbal submission. We have the written submission presented to the Commission. I hope that this would be taken as reference.

CHAIRMAN: Thank you very much. That's it for the Commission's hearing. Thank you very much for the counsel, the senior counsel, for the past 67 days. Thank you very much for your co-operation, and in particular, thank you very much for your patience.

I would also like to take this opportunity to thank those simultaneous interpreters who we have never seen, and also my thanks to the two ladies sitting in front of me. They have been working really diligently to record what we have to say, for the counsel to look at the LiveNote, the transcript.

So that's it for the hearing. Thank you all very much for coming.

(2.45 pm)

(The hearing concluded)

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