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<p>1 Monday, 25 February 2013</p> <p>2 (10.00 am)</p> <p>3 MR LAI SAI-MING (on former affirmation in Punti)</p> <p>4 (All answers via interpreter unless otherwise indicated)</p> <p>5 THE CHAIRMAN: Good morning, Mr Lai.</p> <p>6 A. Good morning.</p> <p>7 THE CHAIRMAN: May I remind you that you continue to testify</p> <p>8 according to your original affirmation.</p> <p>9 A. I understand.</p> <p>10 THE CHAIRMAN: Mr Sussex.</p> <p>11 MR SUSSEX: Mr Chairman, before we resume evidence, I have</p> <p>12 an application to make. I'd like to make that</p> <p>13 application in the absence of the master, and I'd like</p> <p>14 to make that application in camera, if this Commission</p> <p>15 will permit.</p> <p>16 The application is for an adjournment for half</p> <p>17 an hour. I don't wish to go into too much detail in the</p> <p>18 glare of media publicity.</p> <p>19 THE CHAIRMAN: No. There's no need to make the application</p> <p>20 in camera. If leading counsel tells me he needs half</p> <p>21 an hour, then he'll have half an hour.</p> <p>22 MR SUSSEX: Well, I need it for a purpose which I have to</p> <p>23 disclose, which is to have access to the master. He's</p> <p>24 in the middle of his evidence.</p> <p>25 THE CHAIRMAN: I understand that. Well, perhaps as best you</p>	<p>1 nature of things, because Mr Sussex cannot actually</p> <p>2 openly articulate the matter without breaching any</p> <p>3 privilege.</p> <p>4 I would venture to suggest there are two ways of</p> <p>5 looking at it. One way of looking at it would be to say</p> <p>6 he can perfectly well put whatever information he has</p> <p>7 got to the witness and allow him to explain it. That</p> <p>8 would be one way of going about it.</p> <p>9 The other way of going about it would be to look at</p> <p>10 the matter as if Mr Sussex had acquired the information</p> <p>11 before the coxswain had gone into the box. In that case</p> <p>12 he would have had a chance to consider the matter with</p> <p>13 the coxswain before putting him in, and without having</p> <p>14 to raise the question now, halfway through the evidence.</p> <p>15 It could well be asked why, in a way, a difference in</p> <p>16 timing should lead to a different approach being taken.</p> <p>17 But again, these are only cursory thoughts.</p> <p>18 So the two ways of looking at it: one is to really</p> <p>19 ask him in the box, but the other would be --</p> <p>20 THE CHAIRMAN: Yes, well, that is certainly one way of doing</p> <p>21 it. If counsel comes into possession of material during</p> <p>22 the currency of the evidence of his lay client, then</p> <p>23 it's a matter that has to be dealt with openly whilst</p> <p>24 the witness testifies.</p> <p>25 MR SHIEH: But as I say, the other way of looking at it</p>
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<p>1 can proceed in public, allude at least in general terms</p> <p>2 as to the nature of the purpose of such a meeting at</p> <p>3 this stage.</p> <p>4 MR SUSSEX: I have to clarify some instructions which I have</p> <p>5 obtained from other clients, and potentially I am put in</p> <p>6 a position of considerable professional embarrassment,</p> <p>7 and it might lead to my having to cease to act.</p> <p>8 THE CHAIRMAN: For the master or generally?</p> <p>9 MR SUSSEX: For the master and the crew. But I wish to</p> <p>10 clarify the position, and that does involve my</p> <p>11 discussing with the master aspects of his evidence.</p> <p>12 Fortunately, we have not -- although he's confirmed the</p> <p>13 contents of the statement which we've seen, we did not</p> <p>14 actually get to the voyage which is the subject of this</p> <p>15 Inquiry.</p> <p>16 THE CHAIRMAN: No.</p> <p>17 Well, thank you.</p> <p>18 Mr Shieh, can you assist us at all? We have</p> <p>19 an application that the matter be canvassed in camera.</p> <p>20 I'm loathe to do that, although when leading counsel,</p> <p>21 knowing our approach to that, says that that is</p> <p>22 a necessary way in which to deal with it, then of course</p> <p>23 I'll listen to him.</p> <p>24 MR SHIEH: Obviously we are slightly hampered by absence of</p> <p>25 any knowledge as to the precise nature. But that's the</p>	<p>1 would be, assume that this bit of information had come</p> <p>2 into his possession a bit earlier, let's say on</p> <p>3 Thursday, then he would have had the opportunity to deal</p> <p>4 with it in private with his client before putting him</p> <p>5 in, and it could well be asked rhetorically why the</p> <p>6 difference in timing should lead to a difference in</p> <p>7 treatment. After all, the coxswain is still being in</p> <p>8 a way led by his own counsel. It's not as if he has</p> <p>9 been pushed around in cross-examination and counsel</p> <p>10 wants to sort out his answer before re-examination.</p> <p>11 THE CHAIRMAN: I follow that. Thank you for your</p> <p>12 assistance.</p> <p>13 MR SHIEH: These are two ways of looking at the matter,</p> <p>14 obviously, as I say, subject to the caveat that we are</p> <p>15 perhaps hampered by more detailed knowledge.</p> <p>16 THE CHAIRMAN: Obviously. We're all in that situation.</p> <p>17 Mr Sussex, why should this not be a matter that's</p> <p>18 canvassed with the witness in his evidence, he having</p> <p>19 begun his evidence?</p> <p>20 MR SUSSEX: Obviously I can't go into detail because the</p> <p>21 information of which I am in possession is the subject</p> <p>22 of legal professional privilege. But it has the</p> <p>23 potential result that I am seeking to advance a version</p> <p>24 of events which is irreconcilable as between different</p> <p>25 clients.</p>

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<p>1 THE CHAIRMAN: I see your point now. And therefore it may 2 be that you are unable to represent any or -- 3 MR SUSSEX: That's right. It's possible. 4 THE CHAIRMAN: -- only represent some? 5 MR SUSSEX: Well, I can represent the corporate clients but 6 I may not be able to represent the crew. 7 THE CHAIRMAN: I follow that. 8 MR SUSSEX: Obviously if I am able to discuss the point with 9 the master, I may be able to resolve this issue. 10 Alternatively, I may have to give advice on seeking 11 alternative representation if that is desirable in these 12 proceedings. 13 THE CHAIRMAN: Thank you for that. I think what we need to 14 do is my fellow Commissioner and I will retire for 15 a short while whilst we consider the position, and then 16 we will come back and rule on the application. 17 MR SUSSEX: Thank you very much. 18 THE CHAIRMAN: Thank you. Five minutes. 19 (10.07 am) 20 (A short break) 21 (10.17 am) 22 THE CHAIRMAN: Thank you, Mr Sussex. Is there anything more 23 you wish to say? 24 MR SUSSEX: No, sir. 25 THE CHAIRMAN: Thank you. I'll give our ruling now.</p>	<p>1 of a fundamental nature, then of course he must make the 2 judgment as to his position. 3 We will deal with the consequences of such 4 a decision if and when it is made. But for current 5 purposes, examination of Mr Lai is to continue. 6 Mr Sussex. 7 MR SUSSEX: Mr Chairman, I take the view that I am placed in 8 a conflict and I will have to withdraw on behalf of the 9 members of the crew. Henceforth, I can only act for the 10 corporate parties. 11 THE CHAIRMAN: Thank you. Of course we understand your 12 situation, and we, if it is at all necessary, certainly 13 grant you leave to withdraw in the circumstances that 14 you've described. 15 MR SUSSEX: Thank you, sir. And of course that applies to 16 my learned junior as well. 17 THE CHAIRMAN: Of course. 18 MR SUSSEX: And also those instructing me. 19 THE CHAIRMAN: Has any of this been interpreted to Mr Lai? 20 THE INTERPRETER: No. 21 THE CHAIRMAN: Very well. We ought to have the transcript 22 scrolled back and I'm going to ask you to translate 23 everything from the time that we came into the hearing 24 room this morning. 25 THE INTERPRETER: Okay. I will. Everything right from the</p>
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<p>1 Ruling 2 THE CHAIRMAN: Counsel representing Hong Kong &amp; Kowloon 3 Ferry and the various crew members of the Sea Smooth has 4 asked that the evidence of the coxswain, Mr Lai, be 5 interrupted so that he can clarify certain matters with 6 Mr Lai arising apparently out of information that has 7 reached counsel during the time in which Mr Lai has been 8 giving evidence. 9 Because of the nature, apparently, of the new 10 information that Mr Sussex has, concern arises as to 11 whether or not a conflict will arise, a conflict of 12 interest, between the crew members that he currently 13 represents collectively. 14 However, it is a fundamental principle that in 15 proceedings where testimony is being led, once the lay 16 client of counsel has begun giving evidence, counsel 17 does not have the opportunity or right to discuss the 18 lay client's evidence or potential evidence, other than 19 asking him questions openly in the hearing. 20 In our judgment, there is no good reason why that 21 fundamental principle should not obtain in this case. 22 Accordingly, we decline to accede to Mr Sussex's 23 application. He for his part must proceed questioning 24 Mr Lai as he thinks appropriate. If the evidence that 25 is then elicited causes Mr Sussex to discern a conflict</p>	<p>1 beginning? 2 THE CHAIRMAN: From the beginning. Well, there's no need to 3 deal with the formalities at the beginning, but from the 4 time Mr Sussex stood up and addressed the Commission. 5 (Interpreter translates prior proceedings) 6 THE INTERPRETER: I should also translate your ruling? 7 THE CHAIRMAN: Yes, you must translate everything. 8 (Interpreter continues translation) 9 A. I understand. 10 THE CHAIRMAN: Thank you. 11 MR SUSSEX: Mr Chairman, may I be permitted for the benefit 12 of the master to explain that in the absence of being 13 able to obtain instructions, I've sought to discharge my 14 duty to him as client by making the application this 15 morning, but that application was unsuccessful. 16 THE CHAIRMAN: This is apparent from the interchange that's 17 been interpreted to him. 18 MR SUSSEX: Well, I would hope so. That he has the right, 19 upon completion of his evidence, to seek alternative 20 representation. 21 THE CHAIRMAN: I'm going to deal with that now. 22 MR SUSSEX: Thank you very much. 23 THE CHAIRMAN: Mr Lai, first things first: do you understand 24 the situation you find yourself in? 25 A. I don't understand.</p>

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<p>1 THE CHAIRMAN: Let me crystallise it for you. 2 Leading counsel, junior counsel and your solicitors 3 have felt it necessary to withdraw from representing you 4 and your fellow crew of Sea Smooth on that night, 5 1 October 2012. Do you understand that? 6 A. I understand. 7 THE CHAIRMAN: An application was made on your behalf at the 8 outset that you be entitled not only to participate, but 9 to be represented, and that application was granted. 10 You have the right to be represented. 11 Mr Sussex, are the other crew members of Sea Smooth, 12 if not in the hearing room, present in the building? 13 MR SUSSEX: I think they're present in the building. Yes, 14 they are present in the building. 15 THE CHAIRMAN: Could steps be taken to ask them to come into 16 the hearing room, please. Are they nearby? 17 MR SUSSEX: I think they're upstairs. 18 THE CHAIRMAN: Mr Lai, let me explain what I'm going to do 19 next. I'm going to explain the result, as far as the 20 other crew members are concerned; that is to say, like 21 you, they are no longer represented by counsel and 22 solicitors, because they have withdrawn from 23 representing you and them. Do you understand? 24 A. Yes. 25 THE CHAIRMAN: On the other hand, they continue to represent</p>	<p>1 A. I have no idea. 2 THE CHAIRMAN: Well, are you prepared to continue telling us 3 your account of these events here and now? 4 THE INTERPRETER: Sorry, "your" -- 5 THE CHAIRMAN: "Your account of these events". 6 THE INTERPRETER: Thank you. 7 A. I can do that. 8 THE CHAIRMAN: Or, do you wish to have matters adjourned so 9 that you can take some advice about what it is that you 10 might do? Perhaps to be represented by others? 11 A. If it can be adjourned, I would like that to happen. 12 I would like it to be adjourned. 13 THE CHAIRMAN: Very well. Are you in a position to instruct 14 counsel and solicitors at your own expense? 15 A. Yes, I have the financial capability to do that. But 16 after that, I will be left with no money. 17 THE CHAIRMAN: Yes. Well, let me address your fellow 18 crewmen next. 19 Mr Lo Pui-kay. Mr Wong Tai-yau. Mr Wong 20 Yung-shing. 21 Let me repeat your situation. You currently stand 22 unrepresented in these proceedings. 23 Your colleague, the coxswain, Mr Lai, has asked for 24 an adjournment so that he can take advice and perhaps 25 take steps to be represented by others in these</p>
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<p>1 the corporate entities: Islands Ferry, and Hong Kong 2 &amp; Kowloon Ferry. 3 A. I understand. 4 THE CHAIRMAN: So, bear with us for a moment until they are 5 brought into the hearing room. 6 (Remaining members of Sea Smooth crew enter hearing room) 7 THE CHAIRMAN: Thank you, gentlemen. 8 Would you interpret this, please. Would you ask 9 them to stand up as I call their names. 10 Mr Lo Pui-kay. Mr Wong Tai-yau. Mr Wong 11 Yung-shing. 12 Thank you. Please sit down. 13 I've asked that you be brought into the hearing room 14 so that I can inform you of a development in the case 15 which has just occurred. Counsel -- that is leading 16 counsel and junior counsel -- and solicitors who have 17 been representing the three of you and the coxswain, 18 Mr Lai, has informed the Commission that they are all 19 withdrawing from representing all four of you. 20 All four of you, on the application of counsel, were 21 granted the right to participate and be legally 22 represented in these proceedings. That application was 23 acceded to at the outset of the proceedings. 24 So, let me ask you, Mr Lai. Given the situation in 25 which you now find yourself, what do you wish to do?</p>	<p>1 proceedings. 2 What is it that you wish to do? 3 Mr Lo, let me ask you first. Mr Lo Pui-kay. 4 You see, the possibilities that are available to you 5 are for you to simply come and tell your account of 6 events in particular that happened that night, 7 1 October. Or it may be that you prefer to be 8 represented. One factor for you to consider is this, 9 that the vessel was under the command of Mr Lai, not 10 you. 11 Do you understand that? 12 MR LO PUI-KAY: (Via interpreter) I understand. 13 THE CHAIRMAN: It was Mr Lai, apparently, who was steering 14 the vessel as well. 15 Now, Mr Lo, what is it that you would like to do? 16 MR LO PUI-KAY: (Via interpreter) I will answer the 17 questions. 18 THE CHAIRMAN: Thank you. Meaning that you don't ask for 19 proceedings to be adjourned so that you can be 20 represented? Have I understood you correctly? 21 Take your time to think about it. 22 MR LO PUI-KAY: (Via interpreter) I would like to take 23 a while before I make my answer. 24 THE CHAIRMAN: Yes, very well. Sit down. Perhaps you'd be 25 kind enough to pass the microphone to your colleague.</p>

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<p>1 Mr Wong Tai-yau. Let me ask you what you want to do 2 in the position that you find yourself. It may be that 3 you would like some time to reflect on what to do. On 4 the other hand, it may be that you're prepared to 5 proceed now, unrepresented, simply telling your story as 6 a witness. What do you want to do? 7 MR WONG TAI-YAU: (Via interpreter) I would like to go on, 8 continue to answer questions. 9 THE CHAIRMAN: Do I understand you, then, to not seek 10 an adjournment to perhaps consider representation? 11 MR WONG TAI-YAU: (Via interpreter) Correct. 12 THE CHAIRMAN: Thank you. Please sit down. Would you give 13 the microphone to your colleague. 14 Mr Wong Yung-shing. Let me pose the same question 15 I've posed to your other colleagues. Do you wish to 16 apply for an adjournment so that you can consider your 17 position, or are you prepared to carry on unrepresented 18 now, giving your account as a witness of those events of 19 1 October last year? 20 MR WONG YUNG-SHING: (Via interpreter) I would prefer 21 adjournment. 22 THE CHAIRMAN: Very well. Please sit down. 23 MR SHIEH: Mr Chairman, before we proceed further, perhaps 24 I can make two additional points. 25 THE CHAIRMAN: Yes.</p>	<p>1 perhaps in retrospect be taken into account. Because it 2 would appear to be a rather stark choice. 3 THE CHAIRMAN: Well, at the end of the day this is a matter 4 essentially for leading counsel. The Commission has 5 ruled already that it is not going to permit Mr Sussex 6 and those he leads and by whom he is instructed to 7 canvass matters of evidence with the witness Mr Lai in 8 the middle of his evidence. We've made that ruling. 9 MR SHIEH: Yes, very well. 10 THE CHAIRMAN: In consequence of that, Mr Sussex has formed 11 a professional view which has resulted in his indication 12 that he withdraws from representing all of the crew, and 13 we have acceded to that. 14 Could you interpret that. 15 MR SHIEH: Mr Chairman, the point I wish to bring out is 16 that apparently, from Mr Sussex's position as most 17 recently indicated, the "option" of asking the witness 18 in the box to clarify the matter was really not 19 an option, as might have been initially thought. That 20 might well be factored in, and it would be entirely 21 a matter for the Commission whether or not to factor 22 that in now to perhaps reconsider its position. But of 23 course the Commission ultimately is in control of what 24 directional order it wishes to make. 25 The second point I wish to make is this. That is to</p>
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<p>1 MR SHIEH: One requires us to rewind to a bit earlier. 2 I think when the Commission received the initial 3 application, and when I rendered my suggestions that 4 there are two ways of looking at it, I was under the 5 impression that no view has yet been taken as to whether 6 or not there is indeed a situation of embarrassment so 7 as to require -- 8 THE CHAIRMAN: Just pause there. Please interpret this. 9 For that purpose, you may need the transcript. 10 MR SHIEH: It was on that basis that I ventured one 11 possibility, namely that perhaps any "other 12 instructions" be put to the witness whilst he's in the 13 witness box, so that the matter could come out. 14 But after Mr Chairman has made the ruling, Mr Sussex 15 has indicated that he in fact holds the view that he is 16 professionally embarrassed, which means that the one 17 possibility that was mooted was actually not a live 18 possibility at all. And in these circumstances, the 19 option really facing the Commission would really be one 20 whereby either Mr Sussex be allowed to speak to the 21 client; alternatively, withdraw. I mean, that was what 22 really was the option or the dilemma facing the 23 Commission, which perhaps was a little bit at variance 24 with what I or perhaps the Commission was initially 25 thinking to be the case, and therefore this could</p>	<p>1 say, the need for legal representation. Of course we 2 have heard the four crew members indicate their 3 preference as to whether they wish to continue or 4 whether they wish to seek an adjournment. But in 5 circumstances where the possible need for legal 6 representation is required, it may well be -- and 7 I simply venture to suggest -- that the existing legal 8 representatives, even though they may not be able to 9 continue to act for them substantively, could well be in 10 a better position to advise them as to the nitty-gritty 11 or details as to the importance or significance of legal 12 representation, rather than for the crew to be asked 13 point-blank whether they wish to continue. 14 THE CHAIRMAN: I had tried to do that, explain the matters 15 to the two sailors and the engineer. 16 MR SHIEH: Because Mr Sussex did mention that he may have to 17 give some advice as to legal representation. It may 18 well be something he has in mind to render by way of 19 advice before he parts company with them anyway. 20 THE CHAIRMAN: I don't want to press Mr Sussex or Holman 21 Fenwick on this matter, but I had assumed that in their 22 final duties to their lay clients, they would give them 23 the assistance that they're able to do, and I'm sure 24 that's the case. 25 MR SUSSEX: Mr Chairman, that goes without saying. The</p>

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<p>1 difficulty we have, of course, is in relation to the 2 master, who is in purdah at the moment, because we're 3 unable to talk to him at all. 4 THE CHAIRMAN: Yes. 5 I follow that. I'm also conscious of the reality of 6 obtaining legal representation, of the chances of doing 7 so. But what I think we should do now is adjourn for 8 a little while so that perhaps those instructing 9 Mr Sussex can acquaint at least the other three crewmen 10 with the position in which they find themselves. 11 Mr Wong Tai-yau has indicated that he doesn't seek 12 an adjournment and is ready to give his account. In 13 those circumstances, it will fall to counsel for the 14 Commission to lead his testimony, and that's what we 15 will do when we return, subject to any submissions. 16 MR GROSSMAN: Mr Chairman, can I make an observation. 17 I heard that Mr Wong Tai-yau said he's prepared to carry 18 on. I understand he is, stating the obvious, not 19 a professional man. It may be as well if Holman Fenwick 20 at least talk to him. 21 THE CHAIRMAN: Yes, of course. 22 MR GROSSMAN: I'm concerned, frankly, as I'm sure the 23 Commission is, to ensure that justice is done, even 24 though these people are in a sense on the other side. 25 I have another suggestion. We have a number of</p>	<p>1 MR WONG TAI-YAU: (Via interpreter) I can only do that 2 tomorrow. Tomorrow morning. Not until tomorrow 3 morning. 4 THE CHAIRMAN: Is there some special reason for that? 5 MR WONG TAI-YAU: (Via interpreter) I have an appointment 6 with my family members. 7 THE CHAIRMAN: When is that? 8 MR WONG TAI-YAU: (Via interpreter) 2-3 o'clock today. 9 THE CHAIRMAN: What's the nature of that arrangement? 10 MR WONG TAI-YAU: (Via interpreter) I can cancel it. 11 I'll just simply call if you insist. 12 THE CHAIRMAN: Well, this is an Inquiry into the death of 13 39 people. Do you understand that? 14 MR WONG TAI-YAU: (Via interpreter) I understand. 15 I understand. 16 THE CHAIRMAN: Thank you. We'll adjourn, then, for 17 30 minutes. 18 (11.11 am) 19 (A short break) 20 (11.40 am) 21 THE CHAIRMAN: Mr Shieh. 22 MR SHIEH: Mr Chairman, whilst the situation of the coxswain 23 and the others is being sorted out, the next witness 24 will be Mr Wong Tai-yau. 25 THE CHAIRMAN: Very well.</p>
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<p>1 other witnesses, one of whom has made three 2 supplementary statements who are likely to take some 3 time. There's the gentleman from Cheoy Lee, and then 4 there's Captain Browne still. I wonder if you would 5 think, rather than splitting up the crew, if we adjourn 6 say till lunchtime, of starting to call those witnesses, 7 and adjourn till afterwards. It's just simply 8 an observation. 9 THE CHAIRMAN: Thank you, Mr Grossman. Thank you. 10 What we will do is take a longer-than-normal 11 mid-morning break. We'll take 30 minutes. 12 Perhaps you'd interpret this. 13 We're going to take a longer break. 30 minutes. In 14 that 30 minutes, Mr Lo Pui-kay, Mr Wong Tai-yau and 15 Mr Wong Yung-shing, I anticipate that you will receive 16 some assistance and advice as to where you are and what 17 you might do from those that are now your former legal 18 advisers. Do you understand? 19 Mr Lai Sai-ming, you must take such steps as you 20 think appropriate in the situation you find yourself. 21 A. I understand. 22 (The witness stood down) 23 THE CHAIRMAN: But when we return, we would like to hear 24 from Mr Wong Tai-yau, and we'd ask counsel for the 25 Commission to lead his evidence.</p>	<p>1 MR SHIEH: I believe they are still being given advice as to 2 their legal position. 3 THE CHAIRMAN: Let's look forward in any event. What other 4 evidence is it that we might be able to bring on sooner 5 rather than later, to accommodate any gap? 6 MR SHIEH: We have Mr Cheung Fook-chor, the octogenarian 7 draftsman, who was informed that he would be needed 8 possibly Tuesday, because it was anticipated that the 9 coxswain and remaining crew would take the rest of 10 today. 11 THE CHAIRMAN: I understand that. 12 MR SHIEH: So there's Mr Cheung Fook-chor. And there is 13 a number of Mardep witnesses. The DoJ has been told to 14 perhaps rejig or fine tune their evidence so as to only 15 present those which are truly material in relation to 16 what is currently in issue. I understand that process 17 is continuing. So I'm not sure whether or not let's say 18 Mr Wong Wing-chuen, whom I believe to be the witness 19 Mr Grossman referred to, the witness who had a number of 20 supplemental statements, I'm not sure whether or not the 21 fine-tuning of his evidence would be completed in time 22 to be called at reasonably short notice. 23 Perhaps Ms Lok can update us on that. 24 THE CHAIRMAN: Yes. 25 Ms Lok, where are we?</p>

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<p>1 MS LOK: That process has been continuing, and we were given 2 up to I think 5 o'clock today to finish that exercise. 3 We are in the process of streamlining his evidence and 4 have completed by and large the entire exercise, but we 5 are in the hope of sending out a letter perhaps by 6 lunchtime today. 7 THE CHAIRMAN: Very well. That's certainly helpful. 8 Because obviously as events have moved on, the material 9 that was supplied at an earlier stage becomes sometimes 10 redundant or sometimes of very much less significance. 11 So it helps us if it's refined. 12 MS LOK: That's correct, yes, Mr Chairman. 13 THE CHAIRMAN: Thank you. 14 Mr Sussex? 15 MR SUSSEX: Mr Chairman, could I just clarify one point. 16 Obviously my corporate clients will do what they can to 17 assist those of the crew who wish separate legal 18 representation, but one issue arises, and that is the 19 status of Mr Lai. Obviously he has not been permitted 20 to talk to me about his evidence. It seems difficult 21 for anybody to take instructions from him without in 22 some way discussing his evidence. 23 THE CHAIRMAN: Yes. He needs advice, I'd have thought, as 24 to what steps he ought to take if he wishes to be 25 represented, and that has to be realistic advice in</p>	<p>1 MR SUSSEX: That's of course right, but the point is that at 2 the moment, he's in the box; he's not supposed to 3 discuss his evidence with anybody. Yet that puts the 4 new advisers in a rather unenviable position because 5 they're not given the material upon which to advise. 6 THE CHAIRMAN: I don't see the prohibition on discussing his 7 evidence as excluding him discussing his case with new 8 advisers. 9 MR SUSSEX: So be it. Thank you. 10 THE CHAIRMAN: Otherwise how else could one -- these things 11 do happen from time to time. This is not -- 12 MR SUSSEX: Not in my experience, I'm bound to say. 13 THE CHAIRMAN: -- the first time it's happened to me. But 14 they're not common. Commonsense is what's required in 15 order to advance the matter. 16 MR SUSSEX: Yes. 17 THE CHAIRMAN: The first thing I think Mr Lai requires is 18 realistic advice as to how he gets representation and, 19 if he is able to get it, how it's to be funded. It's 20 the latter that's the realistic matter. 21 MR SUSSEX: Of course. 22 MR GROSSMAN: Can I just make a point I hope will be 23 helpful. We're talking about funding, but of course 24 there are other routes. There's the Bar Free Legal 25 Scheme, I think the Law Society have something similar,</p>
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<p>1 terms of how it's to be funded. 2 MR SUSSEX: Of course. 3 THE CHAIRMAN: I take it that the assistance that your 4 corporate clients are offering does not extend to 5 funding. In the circumstances, I wouldn't have thought 6 it would. 7 MR SUSSEX: Well, it might do, but I don't know. 8 MR SHIEH: Mr Chairman, I think what Mr Sussex may be 9 thinking about is perhaps some form of dispensation from 10 the usual rule about not being able to speak to anyone 11 about the subject matter of the evidence that the 12 coxswain is -- 13 THE CHAIRMAN: Well, there's no need to discuss evidence 14 with the coxswain to give him advice about how he gets 15 represented. That doesn't require being -- 16 MR SHIEH: I understand. But I suppose in due course, 17 looking perhaps a few steps ahead, as and when new 18 representatives come on board, there may well come 19 a time when he has to actually give factual 20 instructions. I'm not sure whether that is what 21 Mr Sussex has in mind. 22 MR SUSSEX: That's exactly right. 23 THE CHAIRMAN: But that's a matter he would discuss with new 24 advisers, not with Holman Fenwick. 25 MR SHIEH: Perhaps.</p>	<p>1 and I'm not sure Legal Aid would cover this, but -- 2 THE CHAIRMAN: As far as I'm aware, it doesn't. There's no 3 Legal Aid for representation in a Commission, is there, 4 Mr Shieh? 5 MR SHIEH: No. Those instructing me have made some 6 preliminary checks against the Ordinance and legally it 7 doesn't seem to cover a Commission of Inquiry of this 8 nature. 9 THE CHAIRMAN: No doubt Mr Sussex's solicitors will be able 10 to pass on that advice, as to what the routes are. 11 I see that we have Mr Wong Tai-yau in the witness 12 box. 13 Are you ready to testify, Mr Wong? 14 MR WONG TAI-YAU: (Via interpreter) Yes, I'm ready. 15 MR WONG TAI-YAU (affirmed in Puntì) 16 (All answers via interpreter unless otherwise indicated) 17 Examination by MR SHIEH 18 MR SHIEH: Good morning, Mr Wong. 19 A. Good morning. 20 Q. Following the collision on 1 October, you remember that 21 you had attended interviews with the Hong Kong Police? 22 A. Yes, I remember. 23 Q. Can I ask you to turn to police M. The Chinese is 24 page 3353. The English is page 3354-1. 25 A. Yes, I can see it.</p>

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<p>1 Q. You can see the person being interviewed is you. You 2 see your name there? 3 A. Yes. 4 Q. It took place in the interview room of Cheung Chau 5 Police Station report room? 6 A. Yes. 7 Q. And the interview took place, as recorded here, between 8 11.11 am and 11.45 am on 2 October. 9 A. Yes. 10 Q. Before that interview, you had been arrested, and we can 11 see from this statement, in connection with a case of 12 endangering the safety of others at sea. 13 A. Yes. 14 Q. You remember that the police officer had given you 15 a caution that you were not obliged to say anything 16 unless you wished to, but what you said would be taken 17 down in writing and given in evidence? 18 A. Yes. 19 Q. If you look at this page in the interview record, on the 20 bottom right-hand corner you wrote that you agreed with 21 the content and you signed it? 22 A. Yes. 23 Q. And then on the same day, a bit later, there was 24 a video-recorded interview in Cheung Chau Police 25 Station.</p>	<p>1 THE CHAIRMAN: Was a legal representative in attendance? 2 MR SHIEH: There is, there is. A solicitor, Mr Chan. 3 THE CHAIRMAN: Thank you. 4 MR SHIEH: Mr Wong, you remember later in the same month, on 5 25 October, you attended the Cheung Chau Police Station 6 and had another video-recorded interview? 7 A. Yes. 8 Q. The transcript of the interview is at the same bundle, 9 page 3354-16. 10 A. Yes. 11 Q. It started at 11.56 am and finished at 12.23 pm. 12 A. Yes. 13 MR SHIEH: Mr Chairman, also a lawyer, I think it's Ms Chan, 14 was present on this occasion. 15 THE CHAIRMAN: I take it there's no translation of this 16 either? 17 MR SHIEH: No translation either. 18 THE CHAIRMAN: Is it also the case that there were no -- or 19 rather that Mr Wong availed himself of the right of 20 silence? 21 MR SHIEH: Yes, that is correct. The transcript runs from 22 page 3354-16 all the way to page 3354-50. 23 Mr Wong, you can take a look at that. 24 A. Yes, I can see it. 25 Q. You have also provided a witness statement with</p>
Page 26	Page 28
<p>1 A. Yes. 2 Q. The Chinese transcript is at page 3354-5. The English 3 translation has not yet arrived. 4 Mr Chairman, in relation to the relevant part to the 5 question, the witness actually did not provide any 6 answers. 7 THE CHAIRMAN: Thank you. 8 MR SHIEH: So the absence of a translation is not, 9 hopefully, going to materially affect the proceedings. 10 THE CHAIRMAN: By that you mean that in respect of the 11 events of 1 October -- 12 MR SHIEH: That is correct. 13 THE CHAIRMAN: -- at least those that are important, he 14 declined to answer? 15 MR SHIEH: That is correct. 16 THE CHAIRMAN: Thank you. 17 MR SHIEH: So, Mr Wong, page 3354-5, that is a transcript of 18 a video-taped interview that was conducted with you? 19 A. Yes, I can see it. 20 Q. And this interview record continues until page 3354-15. 21 Do you see that? 22 THE CHAIRMAN: I'm sorry, the commencement time? 23 MR SHIEH: The commencement time is 12.45 pm, and the 24 completion time is 12.53 pm. 25 A. Yes, I can see it.</p>	<p>1 Messrs Holman Fenwick and Willan. 2 A. Yes. 3 Q. That we can find in the Holman Fenwick Willan bundle 1. 4 The English is page 138; the Chinese is page 141-1. 5 Mr Wong, the statement, if you look at the top -- 6 well, if you look at the English version, in the top 7 right-hand corner -- the English is page 138. It says: 8 "Statement of the sailor taken at Hong Kong on 9 4 October 2012." 10 But if we look at the signature page at page 141, 11 the date of signing was 18 January 2013. So is it the 12 case that the statement was taken by the lawyers on 13 4 October, in the sense of meeting you and talking to 14 you and obtaining information from you, but the actual 15 date when you signed on the typed-up statement was on 16 18 January 2013? 17 A. Yes. 18 Q. Right. I would now like to look at this statement with 19 you. 20 Can we have the Chinese version. Page 141-1. We 21 don't need to go through the birth date. 22 Paragraph 3: 23 "I have been a sailor on board ferries in Hong Kong 24 since 1980. In 2008, I joined the Hong Kong &amp; Kowloon 25 Ferry Company Ltd."</p>

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<p>1 A. Yes.</p> <p>2 THE CHAIRMAN: So which ferry companies did you work for</p> <p>3 from 1980 onwards?</p> <p>4 A. Hongkong &amp; Yaumati Ferry.</p> <p>5 THE CHAIRMAN: Until you joined Hong Kong &amp; Kowloon Ferry?</p> <p>6 A. In the interim, I went to work for New Ferry.</p> <p>7 THE CHAIRMAN: What year was that?</p> <p>8 A. I don't really remember, but roughly between 1999 to</p> <p>9 year 2000.</p> <p>10 THE CHAIRMAN: And from New Ferry you joined Hong Kong</p> <p>11 &amp; Kowloon Ferry?</p> <p>12 A. That's right.</p> <p>13 THE CHAIRMAN: And that was in 2008?</p> <p>14 A. Yes.</p> <p>15 THE CHAIRMAN: Yes, Mr Shieh.</p> <p>16 MR SHIEH: What's your education standard?</p> <p>17 A. Primary graduation.</p> <p>18 THE INTERPRETER: I'm sorry.</p> <p>19 A. I did not even graduate my primary school.</p> <p>20 THE CHAIRMAN: So how far did you get in primary school?</p> <p>21 A. Primary 3.</p> <p>22 MR SHIEH: Do you come from a seafaring family or a fishing</p> <p>23 family?</p> <p>24 A. A fishing family.</p> <p>25 Q. When did you begin to have experience of being a sailor</p>	<p>1 received any training on, first of all, engineering</p> <p>2 matters?</p> <p>3 A. No.</p> <p>4 Q. How about radar operation?</p> <p>5 A. No.</p> <p>6 Q. How about life-saving or first-aid?</p> <p>7 A. No.</p> <p>8 Q. Radio?</p> <p>9 A. No.</p> <p>10 Q. Can I now move on to your witness statement at</p> <p>11 paragraph 4:</p> <p>12 "I am a relief sailor sometimes. If a sailor is</p> <p>13 needed because somebody has gone on leave or is ill, for</p> <p>14 example, then I will take their place, as directed by</p> <p>15 the company. However, I would also work on the same</p> <p>16 ferry for several months."</p> <p>17 A. Yes.</p> <p>18 Q. As I understand it, at the material time, and that is</p> <p>19 September, October 2012, you were not attached to the</p> <p>20 ferry Sea Smooth; correct?</p> <p>21 A. Correct.</p> <p>22 Q. If I may ask for police bundle N(II), page 3934. The</p> <p>23 words are extremely small. That is the duty roster.</p> <p>24 Mr Chairman, I don't believe there's an English</p> <p>25 translation.</p>
Page 30	Page 32
<p>1 on catamarans?</p> <p>2 A. At New Ferry.</p> <p>3 Q. In terms of professional training, do you have any</p> <p>4 certificate of competency, for example, as a master of</p> <p>5 a vessel in Hong Kong, whatever the tonnage?</p> <p>6 A. Class III master certificate.</p> <p>7 Q. When did you obtain that?</p> <p>8 A. 2011.</p> <p>9 THE CHAIRMAN: Class III of what category of vessel?</p> <p>10 A. Merchant ships.</p> <p>11 THE CHAIRMAN: Do you have your licence with you?</p> <p>12 A. Yes, I have.</p> <p>13 THE CHAIRMAN: Would you be kind enough to show it to us.</p> <p>14 (Handed).</p> <p>15 Is this a pleasure vessel master's ticket, up to</p> <p>16 15 metres? That is to say, the length of the vessel.</p> <p>17 A. It's a merchant ship. It's not a pleasure vessel.</p> <p>18 THE CHAIRMAN: Yes, but to all events it's restricted to</p> <p>19 vessels of not more than 15 metres in length. Is that</p> <p>20 correct?</p> <p>21 A. Yes.</p> <p>22 THE CHAIRMAN: All right. We'll have this scanned and then,</p> <p>23 when we've done that, we'll return the original to you.</p> <p>24 A. Okay.</p> <p>25 MR SHIEH: In terms of training, have you at any time</p>	<p>1 THE CHAIRMAN: No, I just wanted it on the transcript as to</p> <p>2 what it was. I had guessed what it was.</p> <p>3 MR SHIEH: It's a duty roster for the month of September.</p> <p>4 THE CHAIRMAN: Thank you.</p> <p>5 MR SHIEH: Could I very briefly take the witness to the</p> <p>6 relevant column and simply ask him a general question,</p> <p>7 just to identify the gist of the relevant part.</p> <p>8 Mr Wong, if you were to look at -- well, near the</p> <p>9 middle where there are a few blank columns. If we were</p> <p>10 to count six columns to the left from the middle blank</p> <p>11 column, the only name that we can see -- can the cursor</p> <p>12 point to the name. That is your name; correct? You can</p> <p>13 see "Wong Tai-yau"?</p> <p>14 A. Yes, I can see my name.</p> <p>15 Q. Can you see that?</p> <p>16 A. Yes, I can see it.</p> <p>17 Q. And in the next row, it says "tai gaang", which is</p> <p>18 "relief sailor".</p> <p>19 A. Yes.</p> <p>20 Q. There then follow 30 separate rows corresponding to the</p> <p>21 30 days of September. They show that you have been</p> <p>22 attached or serving on different vessels under the</p> <p>23 ownership of the ferry line.</p> <p>24 A. Yes.</p> <p>25 Q. None of which was Sea Smooth?</p>

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<p>1 A. Correct.</p> <p>2 Q. In fact to the best of your -- so the last time you were</p> <p>3 on board the Sea Smooth would be around, let's say,</p> <p>4 before September?</p> <p>5 A. I don't really remember the date.</p> <p>6 Q. You have certainly served on Sea Smooth before, but not</p> <p>7 in September, but as to when the last time was, you</p> <p>8 can't remember; is that a fair way of putting it?</p> <p>9 A. Yes. Yes, that's right. You are right.</p> <p>10 Q. Can I now look at paragraph 5 of your statement.</p> <p>11 "I joined Sea Smooth at about 07:30 on 1 October.</p> <p>12 The last time I had been on board Sea Smooth was about</p> <p>13 a month ago."</p> <p>14 A. Yes.</p> <p>15 THE CHAIRMAN: That's 7.30 am?</p> <p>16 A. Yes.</p> <p>17 MR SHIEH: "I was well rested before I joined Sea Smooth."</p> <p>18 This is paragraph 6.</p> <p>19 "I was not on duty the previous day. The other crew</p> <p>20 joined at the same time as me: the master, the engineer</p> <p>21 and the other sailor. Sea Smooth was tied up at Central</p> <p>22 Pier when I joined."</p> <p>23 A. Yes.</p> <p>24 Q. The engineer was Lo Pui-kay, and the other sailor was</p> <p>25 Wong Yung-shing?</p>	<p>1 fireworks displays.</p> <p>2 Q. Paragraph 8:</p> <p>3 "As sailor on board, my duties are to look after the</p> <p>4 passengers as they board and disembark from the vessel.</p> <p>5 When the vessel arrives at a pier, I am responsible for</p> <p>6 mooring operations. I let go the mooring lines when we</p> <p>7 depart. I also clean the passenger cabins and do any</p> <p>8 other odd jobs that are required. I report to the</p> <p>9 master."</p> <p>10 A. Yes.</p> <p>11 Q. "After joining at Central Pier, the ferry sailed to load</p> <p>12 fuel. The engineer was in charge of refuelling, and</p> <p>13 I assisted where necessary. After refuelling, the ferry</p> <p>14 returned to Central Pier for the first trip to Peng</p> <p>15 Chau."</p> <p>16 A. Yes.</p> <p>17 Q. "The trips are routine. Before the passengers board,</p> <p>18 I clean the passenger cabins, and check that the life</p> <p>19 jackets are in place. The life jackets are located in</p> <p>20 the bag under each seat. There are also some life</p> <p>21 jackets including life jackets for children in the</p> <p>22 storage area under the staircases connecting the upper</p> <p>23 and the main deck cabins. As the passengers are</p> <p>24 boarding, I help them as necessary. Once they are on</p> <p>25 board, I would let go the mooring lines. After the</p>
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<p>1 A. Yes.</p> <p>2 Q. "I spoke briefly to the departing sailors who told me</p> <p>3 that everything was in order. I then did a walk around</p> <p>4 the passenger cabin to ensure everything was in order.</p> <p>5 The master then gave us a short briefing before the</p> <p>6 vessel set sail."</p> <p>7 A. Yes.</p> <p>8 THE CHAIRMAN: Was the master Lai Sai-ming?</p> <p>9 A. Yes.</p> <p>10 MR SHIEH: What was discussed in the short briefing that the</p> <p>11 master gave you?</p> <p>12 A. Captain Lai told us to make a round, tour the boat, and</p> <p>13 to make sure that the life jackets are in place, also</p> <p>14 the fire-fighting equipment, and also the fire</p> <p>15 extinguishers, make sure they are all in place.</p> <p>16 Q. Were you aware that there would be a fireworks display</p> <p>17 at Victoria Harbour that day?</p> <p>18 A. I knew that there would be a fireworks display from the</p> <p>19 news report.</p> <p>20 Q. Were you aware of any special, for example, ferry trips</p> <p>21 coming out of Lamma, sailing towards Victoria Harbour</p> <p>22 that evening for the special purpose of viewing</p> <p>23 fireworks?</p> <p>24 A. Yes, I was aware of that. Because usually that would be</p> <p>25 what happened, you know, every year when there are</p>	<p>1 master has ordered me to let go, I tidy up the mooring</p> <p>2 lines and secure the door. I then go to the wheelhouse</p> <p>3 to help the master and keep look-out."</p> <p>4 A. Yes.</p> <p>5 Q. "I followed this routine throughout 1 October."</p> <p>6 A. Yes.</p> <p>7 Q. "At about 20:00, we departed Central Pier as usual.</p> <p>8 I carried out my duties at the stern, checked the</p> <p>9 passenger cabin and then went to the wheelhouse. The</p> <p>10 master and engineer were in the wheelhouse. Shortly</p> <p>11 afterwards, the other sailor also arrived."</p> <p>12 A. Yes.</p> <p>13 Q. "The wheelhouse was dark as it always is during</p> <p>14 nighttime. The radar was working but I did not pay much</p> <p>15 attention to it."</p> <p>16 A. Yes.</p> <p>17 Q. Even had you paid attention to it, would you have any</p> <p>18 knowledge as to how to interpret the images on the radar</p> <p>19 monitor?</p> <p>20 A. No, not really capable of.</p> <p>21 Q. Paragraph 14:</p> <p>22 "I sat on the settee on the port side of the</p> <p>23 wheelhouse and kept look-out."</p> <p>24 A. Yes.</p> <p>25 MR SHIEH: Could I have police album II, page 112.</p>

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<p>1 When you say "the settee on the port side", are you 2 talking about that sofa-like structure on the left-hand 3 side of this photograph? 4 A. Yes. 5 Q. So when you said you kept a look-out, you sat there and 6 you kept a visual look-out rather than a look-out on the 7 radar? 8 A. That's right. 9 Q. How did you keep a look-out? Particularly I want to 10 know, did you pay attention to a particular direction, 11 the port side of the vessel or the starboard side of the 12 vessel, or did you just scan generally? 13 A. I will just scan from side to side, scan around. 14 Q. Did your employer give you any instructions or training 15 as to any routine of carrying out a look-out? 16 A. No. 17 Q. Let me be more specific. There's no instruction as to 18 which particular member of the crew must be in the 19 wheelhouse let's say by a particular time to carry out 20 the duty of keeping a look-out, or how they are going to 21 keep a look-out? There's no instruction or training of 22 that nature? 23 A. What happens is that usually after we have done our 24 rounds in the cabins, we will go to the wheelhouse and 25 start the look-out.</p>	<p>1 A. The engineer was seated. 2 Q. And the master? 3 A. He was on the conning chair. 4 Q. So both were seated? 5 A. That's right. Both were seated, because the engineer 6 was making entry in the log. 7 Q. And you sat on the sofa or the settee. So when the 8 other sailor came in, Mr Wong Yung-shing, where did he 9 go? Did he stand or sit? 10 A. I don't really remember. 11 Q. Was he on the sofa with you? 12 A. Yes. It seems that he was seated beside me on the sofa. 13 THE INTERPRETER: When the witness said that, he was 14 pointing his finger at the sofa. 15 MR SHIEH: Yes. 16 THE CHAIRMAN: On which side of the sofa? 17 A. I was seated on the far side of the sofa, and Wong 18 Yung-shing was seated on the near side. 19 THE CHAIRMAN: So you were on the port side of the 20 wheelhouse, and he was towards the starboard side? 21 A. Yes, that's right. 22 THE CHAIRMAN: Just so we're sure, which is the master's 23 conning chair? Look at the photograph on the screen at 24 page 112. Where is it in relation to the wheel, the 25 silver wheel we can see?</p>
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<p>1 Q. Thank you. 2 THE CHAIRMAN: As you have acted as a look-out on vessels, 3 have you ever said to the coxswain, "There's a vessel 4 ahead" or "See that mooring buoy"? Have you ever 5 interrupted, ever? 6 A. Not on that particular evening. 7 THE CHAIRMAN: No, but ever. Have you ever found it 8 necessary to interrupt? 9 A. You mean when I sight any particular object, then I will 10 say such a thing? 11 THE CHAIRMAN: Have you ever found it necessary, whilst 12 you're sitting there on the sofa of this catamaran, to 13 interrupt and say to the coxswain some observation about 14 another vessel or perhaps a mooring can or a buoy? Have 15 you ever had to do that? 16 A. Yes, I have. 17 MR SHIEH: So it was a look-out serving some real purpose, 18 rather than you just sitting there maybe chatting with 19 the coxswain? 20 A. There will be chats between us, but of course we will 21 carry on with the look-out too. 22 Q. Right. You said when you went into the wheelhouse, the 23 master and engineer were there. The master and the 24 engineer, where were they sitting when you went into the 25 wheelhouse? Or standing. They may not be sitting.</p>	<p>1 THE INTERPRETER: Excuse me, Mr Chairman. Which photograph 2 are you referring to? 3 MR SHIEH: Police photo album II, page 112. 4 THE INTERPRETER: The witness was pointing at the 5 black-coloured chair, the one near the middle. 6 THE CHAIRMAN: Is it the one next to the wheel, the silver 7 wheel? 8 A. That's right. The one behind the wheel. 9 THE CHAIRMAN: Thank you. 10 MR SHIEH: Paragraph 15 of your witness statement: 11 "As we were leaving the harbour, there were a lot of 12 small boats and yachts coming the other way. I assumed 13 that they were going to the harbour to watch the 14 fireworks display that night." 15 A. Yes. 16 Q. "The master navigated around the small boats and then 17 continued towards Lamma Island." 18 A. Yes. 19 Q. Your ferry schedule that evening, they were on 30-minute 20 intervals; is that correct? 21 A. Yes. 22 THE CHAIRMAN: So does that mean 8 o'clock departure from 23 Central Pier, and then 8.30 departure from Yung Shue Wan 24 pier? 25 THE INTERPRETER: 8.30 departure from Yung Shue Wan?</p>

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<p>1 THE CHAIRMAN: 8 o'clock from Central Pier, departure, 2 followed by departure from Yung Shue Wan at 8.30, and so 3 on? 4 A. Not on that particular evening. 5 THE CHAIRMAN: What was the intended departure from Yung 6 Shue Wan? 7 A. The ferry running was supposed to stop during that 8 particular segment of time on that evening, because of 9 the fireworks display. 10 THE CHAIRMAN: Thank you. But normally, if it wasn't 11 a fireworks day, would it have been an 8.30 departure 12 from Yung Shue Wan? 13 A. Yes. 14 THE CHAIRMAN: Thank you. 15 MR SHIEH: In terms of the speed of the vessel, did the 16 master navigate at her usual speed? 17 A. More or less. 18 Q. Paragraph 17: 19 "The weather was fine and the visibility was good." 20 A. Yes. 21 Q. "I stayed in the wheelhouse until it was time to get 22 ready for the arrival at the ferry pier at Yung Shue 23 Wan." 24 A. Yes. 25 Q. Try your best to think of the approximate time. After</p>	<p>1 THE CHAIRMAN: Yes, I think that has become apparent from 2 the way Mr Shieh intervened. 3 MR SHIEH: Yes. 4 THE CHAIRMAN: It's certainly apparent to me. 5 MR SHIEH: Mr Wong, we continue. I was asking you about the 6 time. You arrived at the wheelhouse let's say around 7 four, five minutes after departure? 8 A. Yes. 9 Q. Working backwards from the time of the collision, how 10 long before the collision did you leave the wheelhouse 11 to get ready for arrival at Yung Shue Wan? 12 A. I would say 30 to 40 seconds. 13 Q. So basically let's say at about 8.05 pm that day, you 14 arrived at the wheelhouse. And you left the wheelhouse 15 to get ready for arrival at Yung Shue Wan very shortly 16 before the collision, in terms of a few tens of seconds? 17 A. When I had already made my down to the lower deck. 18 THE CHAIRMAN: So you exited the wheelhouse and you went 19 down from the upper deck to the main deck? 20 A. Yes, that's right. 21 THE CHAIRMAN: Had you reached the main deck? 22 A. No, there's one step to go. 23 THE CHAIRMAN: Thank you. 24 MR SHIEH: Because we have some objective evidence that the 25 collision took place around about 8.20 pm and 17</p>
Page 42	Page 44
<p>1 the departure of the ferry from Central Pier at about 2 8 o'clock, you carried out your duties at the stern and 3 in the cabin. How long did it take you to get to the 4 wheelhouse to commence your look-out duties? A few 5 minutes? 6 A. About four to five minutes. 7 THE CHAIRMAN: Was the vessel still in Victoria Harbour? 8 A. Yes. It hadn't even passed the Western District 9 Stadium, the sports ground. 10 MR SHIEH: That's a little past Shun Tak Centre? 11 A. That's right. Just past the store that sells dry 12 seafood. 13 Q. "Easterly cardinal buoy". 14 A. That's right. 15 THE CHAIRMAN: And then you have a channel that takes you 16 with Green Island on the starboard side, Hong Kong 17 Island on the port side? 18 A. Not even. We haven't arrived. 19 THE CHAIRMAN: I appreciate that, but looking forward, 20 that's what lies ahead for you? 21 A. Yes. 22 MR SUSSEX: Just for the sake of the transcript, could we 23 make clear that that has nothing to do with a shop that 24 sells dry seafood. That was a wrong translation for 25 "eastern cardinal buoy".</p>	<p>1 seconds. So if we work backwards, it would be around 2 8.19, sometime let's say 8.19 and 30 seconds, that you 3 left the wheelhouse and went to prepare for arrival at 4 Yung Shue Wan. I'm not trying to be pedantically 5 precise, but it would be around 8.19ish when you left 6 the wheelhouse. 7 A. I wasn't looking at my watch, so I don't have the -- 8 I have no idea what time it was. 9 THE CHAIRMAN: But the journey that you've described -- 10 walking out of the wheelhouse, down the stairs, and you 11 hadn't even reached the bottom of the stairs -- how long 12 had that taken you? Before the collision happened. 13 A. I didn't notice, because usually I don't wear a watch. 14 THE CHAIRMAN: This is quite a short journey though? 15 A. Depends on how fast and how slow you walk the stairs. 16 THE CHAIRMAN: Well, you did it. 17 A. Usually the time I would take is 30 seconds. 18 THE CHAIRMAN: Thank you. 19 A. Yes, 30 seconds. 20 MR SHIEH: That is in line with what he said earlier about 21 30 to 40 seconds from the time of collision, working 22 backwards. 23 Mr Wong, then you said: 24 "This was shortly after passing the beacon off Shek 25 Kok Tsui, just a few minutes before we would arrive at</p>

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<p>1 the pier." 2 A. No. We haven't arrived at the Shek Kok Tsui beacon, but 3 we're about to get there. 4 Q. Yes. You left the wheelhouse at about the same time as 5 the engineer and the other sailor? 6 A. Yes, me and the engineer and the other sailor, we left 7 the wheelhouse at the same time. 8 THE CHAIRMAN: How did you know that you had not yet reached 9 Shek Kok Tsui light beacon? 10 A. Because when you looked out of the boat, you could see 11 the beacon is a little ahead of us. 12 THE CHAIRMAN: And that's what you could see? 13 A. Yes, that's what I could see. 14 THE CHAIRMAN: Where did it lie in relation to the boat's 15 course? 16 A. On our left-hand side. 17 THE CHAIRMAN: Thank you. 18 MR SHIEH: That was your routine; correct? 19 A. What do you mean? Which work are you talking about, 20 "routine"? 21 Q. Leaving the wheelhouse at around about the time before 22 you get abeam of the Shek Kok Tsui beacon, to get ready 23 for arrival? 24 A. Yes. 25 Q. "Before leaving the wheelhouse I did not see any ships</p>	<p>1 A. If it is a fog light, then usually it would light up 2 only when it's foggy. 3 Q. Right. But this light was lit up all the time; correct? 4 A. Yes, 24 hours. Because every time when I passed it at 5 night, it would be on. 6 Q. But according to you, it would be on daytime as well; 7 right? 8 A. I can't see whether it's on or not during daytime. 9 THE CHAIRMAN: It's on at night whether or not it's foggy. 10 That's your point? 11 A. That's right. 12 MR SHIEH: Turn to pages 639 and 640. These depict the same 13 light? 14 A. Yes. 15 Q. Pages 641 and 642. The same light? 16 A. Yes. 17 Q. Those are taken when it's not entirely dark, but if you 18 turn to pages 643 and 644, page 643 depicts the same 19 light? 20 A. Yes. 21 Q. Page 644? It may be a bit difficult for you to see, but 22 what I want to ask you is -- take a look at pages 644, 23 645, 646, all the way down to page 649. 24 THE INTERPRETER: The witness just pointed at the photograph 25 on page 646 and identified it as the same light.</p>
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<p>1 or small craft ahead of Sea Smooth. I could see the 2 shore lights of Lamma Island, especially the power 3 station, but no other lights. There was one particular 4 bright light towards the power station shining directly 5 at us." 6 A. Yes. 7 Q. Could I ask you to look at the police photograph album, 8 page 636. Do you recognise this image? 9 A. Yes, I recognise it. 10 Q. Tell us what it is. 11 A. This is the beacon of the typhoon shelter off Lamma 12 Island. 13 THE INTERPRETER: Sorry. 14 A. This is the searchlight. 15 THE CHAIRMAN: I'm sorry, I'm correcting the translation. 16 A. This is the searchlight of the Lamma Island typhoon 17 shelter. 18 MR SHIEH: Is that the bright light that you refer to at 19 paragraph 19 of your witness statement? 20 A. Yes. 21 Q. Turn to page 637 of the bundle. And moving on, 22 page 638. The same light? 23 A. Yes. 24 Q. In these proceedings, this light has been described as 25 a fog light. Were you aware of its functions?</p>	<p>1 MR SHIEH: Right. So I just want a feel of it, because 2 obviously these photographs were not taken on the night 3 in question. But you pointed at page 646. So are you 4 saying that what we can see at page 646 would be around 5 about the sort of intensity that would come from that 6 light on the night of 1 October? 7 A. That's right. More or less the same. 8 Q. In your experience, have you been able to see other 9 vessels nearby against the background of this light? 10 A. Well, if the boats or vessels are further away from the 11 source of the light, yes, then I would be able to see 12 them. 13 Q. So can you tell us some of the experience that you've 14 had, if you can, as to how far away from this light the 15 vessel had to be before you were able to see it at 16 night? I mean, how far away from this light a vessel 17 had to be before you would be able to see that vessel. 18 A. Over 100 metres. 19 Q. Let me just get it clear. So if a vessel was within 20 100 metres of this light, then you say maybe your vision 21 might be blinded by the light. But if the vessel was 22 more than 100 metres from this light, then in your 23 experience, you would be able to see that ship's lights 24 at night? 25 A. Yes.</p>

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<p>1 Q. But that very night, before you left the wheelhouse 2 together with the other sailor and the engineer, when 3 you looked out of the window of the wheelhouse, you 4 could not see any navigation lights of any vessel; is 5 that what you're saying? 6 A. Yes. 7 Q. There would have been about, well, let's say between 8 10 and 15 minutes when you and the master and the 9 engineer and the other sailor were together in the 10 wheelhouse? 11 A. Correct. 12 Q. What were the four of you doing in the wheelhouse during 13 that period? 14 A. We were doing the look-out, and then the engineer had 15 just finished his entries in the log book. When the 16 engineer finished the entries in the log book, then he 17 was seated at the table just a little under the log 18 book, and then the sailor Wong Yung-shing and me were 19 seated on the sofa. Wong Yung-shing was seated on my 20 right side. 21 Q. You mean after the engineer had finished writing up the 22 log book, he moved to a little table? 23 THE INTERPRETER: The witness was pointing at the photograph 24 on the screen, and then saying, "There should have been 25 a little table right beside this bench, but it's missing</p>	<p>1 over the lunch adjournment. 2 MR SHIEH: Perhaps we'll look at it after the lunch break. 3 THE CHAIRMAN: Yes. Let's take the lunch break now. 4 Mr Wong, we're going to take the lunch break now and 5 we'll resume this afternoon at 2.30. Would you be here 6 then to begin your evidence at 2.30. 7 A. Yes, I understand. 8 THE CHAIRMAN: I see Mr Lo Pui-kay and Mr Wong Yung-shing 9 sitting in the back of the hearing room. Could they be 10 given the microphone. 11 MR WONG YUNG-SHING: (Via interpreter) Mr Chairman, I didn't 12 hear what you said. 13 THE CHAIRMAN: All I've said is that we've seen Mr Lo 14 Pui-kay and Mr Wong Yung-shing at the back of the 15 hearing room. I just want to enquire of these gentlemen 16 whether they've resolved the matter for which they 17 wanted an adjournment. 18 MR WONG YUNG-SHING: (Via interpreter) Yes, I will continue 19 and go on to testify. 20 THE CHAIRMAN: Thank you very much. And your colleague? 21 What's his position? 22 MR LO PUI-KAY: (Via interpreter) Yes, I will go on to 23 testify. 24 THE CHAIRMAN: Thank you. We'll adjourn, then, until 2.30 25 this afternoon.</p>
Page 50	Page 52
<p>1 in this photograph". 2 MR SHIEH: When you say "beside this bench", beside which 3 one? Can you point it out for us? 4 THE CHAIRMAN: Perhaps we could try another photograph. 5 Page 1984. That's a photograph that shows this area. 6 It's the one that has the -- it may be a marine bundle 7 photograph, because it has the very helpful sketch that 8 tells you the layout of the wheelhouse. Page 1984. 9 Yes, that one, and then the lower photograph. 10 Do you mean the area in front of the far seat, the 11 one on the port side of the bridge, next to which there 12 is that cooking pot? Is that what you mean? 13 A. (Chinese spoken). 14 MR SHIEH: Perhaps police album page 114, Mr Chairman. 15 THE CHAIRMAN: Do we have an answer to that? 16 A. No. 17 THE CHAIRMAN: So it's not there? 18 A. Not there. 19 MR SHIEH: Police album page 114. 20 Could it be that little area in front of that chair? 21 A. No. No, not that either. 22 THE CHAIRMAN: Do we have the log book for Sea Smooth? 23 MR SHIEH: We should, because I don't believe that it would 24 have been lost or destroyed in the incident. 25 THE CHAIRMAN: Perhaps that's something that could be found</p>	<p>1 (1.01 pm) 2 (The luncheon adjournment) 3 (2.30 pm) 4 THE CHAIRMAN: Mr Wong, good afternoon. May I remind you 5 that you continue to testify according to your original 6 affirmation. 7 A. Yes, I understand. 8 MR SHIEH: Mr Wong, returning to the question where we 9 stopped before the lunch adjournment, which is where the 10 engineer was during the period when he and you and the 11 coxswain and the other sailor were together in the 12 wheelhouse. 13 A. (Chinese spoken). 14 Q. Can you wait for my question. We know that you and Wong 15 Yung-shing, the other sailor, were seated together on 16 the sofa that we can see in police album II at page 112. 17 So you two were seated there; right? 18 A. Yes. 19 Q. The coxswain, Mr Lai, was seated on that chair which is 20 closest to us on this photo, the black one? 21 A. The chair that's closest to the wheel. 22 Q. All right. Now, that leaves the engineer. You said 23 that he filled in the log book; is that correct? 24 A. Yes. 25 Q. We were trying to find out where that took place.</p>

Page 53	<p>1 A. Yes, I know where his position was now.</p> <p>2 Q. You mentioned something to the effect that the precise</p> <p>3 table or location where he wrote the log book can't be</p> <p>4 seen in this photograph.</p> <p>5 A. I'm able to identify the table right now on the</p> <p>6 photograph.</p> <p>7 Q. Please.</p> <p>8 A. Photograph 113.</p> <p>9 Q. Yes.</p> <p>10 THE INTERPRETER: The witness was pointing on the right</p> <p>11 bottom corner where you can see a black shape. That</p> <p>12 should be the surface of the sofa. And then further,</p> <p>13 you can see --</p> <p>14 A. Yes, exactly where the cursor is pointing now.</p> <p>15 THE INTERPRETER: That looks like a kind of slide-rule</p> <p>16 shape.</p> <p>17 A. That should be the small table.</p> <p>18 MR SHIEH: So, just for the record, it would be at</p> <p>19 a location where, if you go into the wheelhouse, on the</p> <p>20 starboard side of the wheelhouse; correct?</p> <p>21 A. Yes.</p> <p>22 Q. Just by the door which leads to bridge wing on the</p> <p>23 starboard side?</p> <p>24 A. When you open the sliding door, you can go out to the</p> <p>25 corridor.</p>	Page 55	<p>1 THE CHAIRMAN: Where was he when he was doing that? Was he</p> <p>2 seated in the other chair, or not?</p> <p>3 A. Because you remember the wheelhouse was very dark then,</p> <p>4 so he would have been standing there.</p> <p>5 THE INTERPRETER: The witness was pointing at the black</p> <p>6 semi-circle shape on the photograph on the screen.</p> <p>7 A. That's where they would be standing. He'd have to be</p> <p>8 quite near to the dashboard in order to be able to see</p> <p>9 the lights and switches.</p> <p>10 THE CHAIRMAN: Where is this position in relation to the two</p> <p>11 chairs?</p> <p>12 THE INTERPRETER: The witness was pointing at the space</p> <p>13 right next to the semi-circle blue shape.</p> <p>14 A. This is the space, big enough to accommodate a person</p> <p>15 there.</p> <p>16 THE CHAIRMAN: So he was standing in front of the seat to</p> <p>17 the port side of where the coxswain was seated; is that</p> <p>18 what you're telling us?</p> <p>19 A. Yes.</p> <p>20 THE CHAIRMAN: He never sat down?</p> <p>21 A. Yes, he had, because he went back to the table, the</p> <p>22 small table and sat down there.</p> <p>23 MR SHIEH: No, the small table was the small table on the</p> <p>24 starboard side where he was filling in the log; right?</p> <p>25 A. Because there was a little chair right beside the small</p>
Page 54	<p>1 THE CHAIRMAN: You're pointing to the door on the right-hand</p> <p>2 side of the photograph, not the door that is in the</p> <p>3 middle of the photograph?</p> <p>4 A. That's right.</p> <p>5 THE INTERPRETER: On the right-hand side -- the witness is</p> <p>6 pointing at the door on the right-hand side of the</p> <p>7 photo.</p> <p>8 A. Once you step out there there should be two to three</p> <p>9 flights of steps.</p> <p>10 MR SHIEH: Thank you. So the engineer was on the starboard</p> <p>11 side of the wheelhouse when he was filling in the log?</p> <p>12 A. Correct.</p> <p>13 Q. After filling in the log, did the engineer move to sit</p> <p>14 or stand elsewhere in the wheelhouse? Because it would</p> <p>15 not have taken too long to fill in the log.</p> <p>16 A. You're correct, it wouldn't have taken too long. But</p> <p>17 whether he was walking around or what he was doing after</p> <p>18 that, I'm not sure.</p> <p>19 Q. You don't know whether he had been walking around. Was</p> <p>20 he stationed near or at a particular place? For</p> <p>21 example, did he sit next to the coxswain for most of the</p> <p>22 time?</p> <p>23 A. He would have taken a look or two at the dashboard, at</p> <p>24 the dials and switches on the console. He would have</p> <p>25 done that.</p>	Page 56	<p>1 table. When he was taking the log, creating entry, he</p> <p>2 would be seated on that small chair and writing his</p> <p>3 entry at the small table.</p> <p>4 THE CHAIRMAN: Did the engineer ever occupy the second</p> <p>5 chair, the one to the port side of where the coxswain</p> <p>6 sat, on that voyage?</p> <p>7 A. No.</p> <p>8 MR SHIEH: So even at that point in time, or during the time</p> <p>9 when he was looking at the console, he was standing</p> <p>10 between the other chair and the blue semi-circle?</p> <p>11 A. He would be standing in front of this black chair, sofa.</p> <p>12 THE CHAIRMAN: Well, it's a chair, is it not, not a sofa?</p> <p>13 A. That's right, the chair.</p> <p>14 MR SHIEH: My attention has been drawn to marine bundle 8,</p> <p>15 page 1982, which is an aerial sketch of the layout of</p> <p>16 the wheelhouse of Sea Smooth. Could the cursor now be</p> <p>17 moved towards the bottom of this sketch. A little bit</p> <p>18 up, to the left. That says "table". Is that the little</p> <p>19 table where the engineer filled in the log?</p> <p>20 A. Where would be the exit, counsel?</p> <p>21 Q. The exit would be -- if the cursor were to move a little</p> <p>22 bit up, there would be some steps depicted. Yes, here.</p> <p>23 There are some steps being depicted.</p> <p>24 A. No. If that would be the exit, then the table should be</p> <p>25 on the port side of the exit. It shouldn't be on this</p>

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<p>1 side as it is being shown now. It should be on the 2 other side. Because there would be a fire extinguisher 3 there. On photo 113, there should be a fire 4 extinguisher. Here you can see, at photo 113, a little, 5 tiny red part there. That should be the top part of the 6 extinguisher.</p> <p>7 Then, next to the fire extinguisher, that should be 8 the small table. That's right, there is a small table.</p> <p>9 Q. So on this diagram at page 1982, if I were to ask you -- 10 to give you a free hand to direct the cursor to where 11 the table would be, would you be able to help us? Could 12 the cursor stay at, for example, the "up".</p> <p>13 You can see the little arrow there, the cursor. You 14 can direct the cursor to move a bit up or a little bit 15 down, and it will obey you. Can you direct it to go to 16 the place where the small table was?</p> <p>17 A. Up, up, up. Go up. Yes. Almost, but not quite, 18 touching the settee. That's where the table should be.</p> <p>19 Q. Right. Thank you.</p> <p>20 THE CHAIRMAN: So is there only one set of stairs up into 21 the wheelhouse, the one next to the English word "up"?</p> <p>22 A. Yes.</p> <p>23 MR SHIEH: That is where people gained entry into the 24 wheelhouse; correct?</p> <p>25 A. No. There is a door near the English word "up". There</p>	<p>1 the entire 10-15 minutes?</p> <p>2 A. Yes.</p> <p>3 Q. How about the other sailor?</p> <p>4 A. You see, the wheelhouse was pretty dark there, so I'm 5 not really sure what my other colleague was doing.</p> <p>6 Q. There was dead silence? Did anyone say anything? Was 7 there chatting?</p> <p>8 A. Yes, there were chats there. But it's not long. It's 9 just one remark or two.</p> <p>10 Q. Remarks on what you could see out there, or discussion 11 on particular topics?</p> <p>12 A. We say, "Ah, you see, there are so many crafts and 13 vessels out there. They should all have been going to 14 watch the fireworks display."</p> <p>15 Q. So you could see some ships around at some stage during 16 that journey?</p> <p>17 A. Yes.</p> <p>18 Q. Could I ask you to look at expert bundle 1, page 361. 19 Could we have a close-up.</p> <p>20 We have objective evidence that the collision took 21 place around about 20:20:17. But let's look at the 22 situation about, let's say, less than a minute before. 23 Let's look at the position of your vessel, the Sea 24 Smooth, at, say, 20:19:20 on the left-hand side. 25 20:19:20. Yes.</p>
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<p>1 is the door. We have to walk out of this door and then 2 turn around, using the staircase to go into the 3 wheelhouse again. The door that is near the English 4 word "up" is a door that goes down to the main deck.</p> <p>5 Q. I see. So where that word "up" appears, that has 6 nothing to do with entering the wheelhouse?</p> <p>7 A. The only access, entrance into the wheelhouse, would 8 have to be -- go down here to corridor and then go 9 through the English word "up". That would be the only 10 entrance, and also the only exit out of the wheelhouse.</p> <p>11 Q. Yes. So let me recap. That arrow next to the word "up" 12 points at the only exit from and entrance to the 13 wheelhouse?</p> <p>14 A. Correct.</p> <p>15 Q. So when you enter the wheelhouse from that entrance, the 16 little table on which the engineer wrote the log would 17 be on your left-hand side?</p> <p>18 A. Correct, it should be on my left-hand side.</p> <p>19 Q. Thank you. Can we now come back to the question of the 20 four of you in the wheelhouse. All of you were keeping 21 a look-out?</p> <p>22 A. I'm not certain about that.</p> <p>23 Q. Apart from keeping a look-out, talking about yourself, 24 what else did you do? You sat on the sofa and glanced 25 and scanned the window in front of the wheelhouse for</p>	<p>1 That is the result of plotting by a master mariner, 2 by looking at the longitude and latitude radar data. 3 That would be where the Sea Smooth was at 20:19:20. 4 If we were to move the cursor down on the left-hand 5 side -- maybe we'll move to 20:19:02. Move down. 6 Further down. Yes, around about here.</p> <p>7 A. Yes, I am looking at it.</p> <p>8 Q. The time doesn't match exactly, but that represents the 9 position around about a minute prior to the collision?</p> <p>10 THE CHAIRMAN: That being the position of the Lamma IV?</p> <p>11 MR SHIEH: Yes. The cursor is now pointing at that circle, 12 which represents the position of the Lamma IV.</p> <p>13 THE CHAIRMAN: Do you understand?</p> <p>14 A. Yes, I do.</p> <p>15 MR SHIEH: So that would be around about the relative 16 position of the two vessels, about a minute prior to the 17 collision.</p> <p>18 I'm telling him, because this is what the chart 19 depicts.</p> <p>20 Now, 20:19:20, there was still some way to go before 21 the Shek Kok Tsui beacon; correct?</p> <p>22 A. Yes.</p> <p>23 Q. At that point in time, imagine -- I know sometimes it's 24 difficult to visualise, but imagine you were actually in 25 the Sea Smooth when it was at that position. That would</p>

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<p>1 still be a time when you were in the wheelhouse? In 2 other words, you had not yet left the wheelhouse when 3 the vessel was at 20:19:20? Because you said you left 4 the wheelhouse at about the same time as the engineer 5 and the other sailor, and that was shortly after passing 6 the beacon off Shek Kok Tsui. 7 THE CHAIRMAN: But he's corrected that. It's not when he 8 left the wheelhouse. 9 MR SHIEH: A bit before, I think. 10 THE CHAIRMAN: He left it before they got to there. 11 MR SHIEH: Yes. Perhaps I should test that by asking him 12 how long before that. 13 THE CHAIRMAN: Well, he's told us that he knew that because 14 he could see the light up ahead on the port side. 15 MR SHIEH: Yes. Well, let me ask him ... 16 Mr Wong, looking at the position on this chart, 17 would you be able to assist us as to whether or not at 18 that point in time, 20:19:20, that was a time when you 19 were still in the wheelhouse? 20 A. I cannot be sure. I'm not sure whether I would still be 21 in the wheelhouse at that point of time. 22 THE CHAIRMAN: What you can tell us is that when you left 23 the wheelhouse, you could see the light on the Shek Kok 24 Tsui beacon forward on the port side of Sea Smooth? 25 A. Yes.</p>	<p>1 Q. We can see on this chart that at the corresponding time, 2 20:19:02, Lamma IV was at a position where it's already 3 passed the Yung Shue Wan ferry pier? 4 THE CHAIRMAN: That is, going north. It had already 5 passed -- 6 MR SHIEH: Going north. 7 THE CHAIRMAN: Going from the south, and now it had gone 8 past it, travelling to the north. 9 A. I was unable to see. I didn't see it. 10 MR SHIEH: You were not keeping a look-out then, were you, 11 Mr Wong? 12 A. I didn't see there was a ship coming at us. 13 Q. Were you doing other things, like chatting in another 14 direction in the wheelhouse? 15 A. I saw that there were some ships at anchor in the 16 neighbourhood. 17 Q. Yes, at the North-west Lamma Anchorage? 18 A. That's right. Correct. 19 Q. So you were able to see those anchored vessels? 20 A. Yes. 21 Q. Have you had previous experience whereby because of the 22 fog light at the power station, your vision was hampered 23 with the result that approaching vessels were not 24 detected until very late? 25 A. Yes.</p>
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<p>1 THE CHAIRMAN: And that's how you knew it was time to go 2 down below to get ready to berth? 3 A. Yes. 4 MR SHIEH: But it would be a matter of 30, 40 seconds 5 between the time you left the wheelhouse and the time of 6 the collision? 7 A. Yes. 8 Q. So let's give it a little bit of a buffer. If we move 9 the cursor further up to 20:19. 10 A. Yes, I can see it. 11 Q. That would be more than a minute prior to the collision? 12 A. Yes. 13 Q. The equivalent position of Lamma IV at around about that 14 time would be where the cursor is now pointing. 15 Could the cursor move down to 20:19:02. 16 Looking at the position of the Sea Smooth at 20:19, 17 would I be correct to say that at that time, at that 18 point in time, 20:19, at that point in time still some 19 way off the beacon off Shek Kok Tsui, you would still be 20 in the wheelhouse? 21 A. Yes. 22 Q. You're telling us that at that point in time, looking 23 forward, you were not able to see any navigation lights 24 from any approaching vessel? 25 A. Correct.</p>	<p>1 Q. On those occasions, how near would the vessels be before 2 you would be able to see them? 3 A. As near as 300 metres. 200 and 300 metres. 4 Q. 200-300 metres from a catamaran, a Hong Kong &amp; Kowloon 5 Ferry catamaran? 6 A. Yes. 7 Q. Were any of those vessels Hongkong Electric vessels? 8 A. Not necessarily. 9 THE CHAIRMAN: But on any occasion, was one of them 10 a Hongkong Electric vessel? 11 A. I don't remember. 12 THE CHAIRMAN: What sort of vessels were they? 13 A. It will be yachts, pleasure boats and yachts. 14 MR SHIEH: What other kinds of vessels, apart from that? 15 A. Yes, also fishing boats, because back at those times, 16 there were still fishing boats. 17 Q. The sort of speed with which the catamarans operated by 18 Hong Kong &amp; Kowloon Ferry would be around 20-25 knots? 19 A. Yes. 20 Q. At the area that we are now talking about. 21 A. Yes. 22 Q. Of course, if it was in the harbour, the speed would be 23 a bit lower. 24 A. Yes, correct. 25 Q. 200-300 metres, with the sort of speed that we are</p>

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<p>1 talking about for Hong Kong &amp; Kowloon Ferry vessels, 2 would you regard that to be a rather close encounter, 3 situation? With the sort of speed that we are talking 4 about, 20-25 knots, would a distance of 200-300 metres 5 be regarded as a rather close encounter? 6 A. This would be up to the captain what to say. It is his 7 call, because he is the one who can read radar. So when 8 I say "200-300 metres", that's what I can tell. But it 9 is up to the captain himself, because he is the one 10 who -- because he probably had looked at the radar 11 already. 12 Q. You mean generally speaking, you would rely on the 13 coxswain to monitor the condition of the sea nearby, 14 including approaching vessels, by monitoring the radar? 15 Generally. 16 A. Well, there is a difference between daytime and 17 nighttime. 18 Q. Okay. Let's talk about nighttime. 19 A. Most of the time, yes. 20 Q. So are you saying that to your knowledge, coxswains on 21 board Hong Kong &amp; Kowloon Ferry vessels that you had 22 served on had a habit of looking at radar to monitor the 23 condition of the sea? 24 A. Normally, yes. 25 Q. You regard that as sensible?</p>	<p>1 in question? During the journey in question on 2 1 October? 3 A. I wouldn't know whether that was its position, where it 4 is now. 5 Q. Can you tell us whether you know what this object is? 6 A. It's a steaming pot. 7 Q. Leaving aside where its precise location was on the 8 night in question, are you aware of the existence of 9 this object in the wheelhouse that day? I know you 10 don't regularly serve on Sea Smooth. 11 A. Yes, I was aware of it. 12 Q. Had anyone made any use of it at any time during that 13 day? 14 A. Yes. 15 Q. What time, to the best of your recollection? 16 A. Afternoon. 17 Q. For what? 18 A. To cook rice with. 19 Q. Did the company, in arranging your shifts, allow you 20 meal time at the pier? 21 A. No. 22 Q. You're expected to cook and eat in the wheelhouse? 23 A. You can't really say that. I wouldn't put it that way. 24 But, you see, nobody brought meals for us, and that's 25 what we could manage.</p>
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<p>1 A. I don't know. 2 Q. If you don't look at the radar, as you say, the fog 3 light may hamper your vision so that you might only see 4 an approaching vessel with your naked eye about 5 200 metres away. 6 THE INTERPRETER: "Sensible", the question is? 7 MR SHIEH: "Sensible". 8 A. I don't know. 9 Q. As far as you could observe, on the night in question, 10 did the coxswain look at the radar at all or monitor the 11 radar at all? 12 A. I don't know. 13 Q. Did he say anything about having observed anything on 14 the radar? 15 A. No. 16 Q. So as far as you were concerned, up until the time when 17 you left the wheelhouse, 30-40 seconds prior to the 18 collision, it was a relatively uneventful journey? 19 A. Yes. 20 Q. Look at page 115 of the police album. Can you see that 21 round structure at the bottom of this photograph? Can 22 you see that structure, that object where the cursor is 23 pointing at now? 24 A. Yes, I'm looking at it. 25 Q. Was it there in the evening in question, for the journey</p>	<p>1 Q. So that's for your lunch? 2 A. Yes. 3 Q. So it heated up lunch for, what, the entire crew of 4 four? 5 A. No, no. 6 Q. So it heated up some food for somebody during lunch? 7 A. Yes. 8 Q. Who used it? 9 A. Including the coxswain. 10 Q. At lunch? 11 A. Yes. 12 Q. For the journey in question, which departed Yung Shue 13 Wan at 8 o'clock, by that stage, had you all had dinner 14 yet? Sailing towards Yung Shue Wan, I'm sorry. 15 A. Three of us had, but not the coxswain. 16 Q. Do you know whether there was any cooking taking place 17 in that steamer or cooker during that particular 18 journey? 19 A. No. 20 Q. I see. So you can positively say "no" this time? 21 A. Yes, I can. Because, you see, once there is steaming 22 going on, there is a lot of steam going up which fogs up 23 the window. 24 THE CHAIRMAN: What about eating from the cooker during that 25 voyage, 8 o'clock onwards?</p>

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<p>1 A. No.</p> <p>2 MR SHIEH: And you aren't sure whether or not the cooker was</p> <p>3 in this position at the time of the collision?</p> <p>4 A. I cannot be sure, because usually this cooker or this</p> <p>5 pot wouldn't have been in this position as being shown</p> <p>6 here in the photo.</p> <p>7 Q. Where would it usually be put?</p> <p>8 A. It would be under.</p> <p>9 THE INTERPRETER: The witness is trying to find -- the</p> <p>10 witness is referring to photo on page 112.</p> <p>11 MR SHIEH: Yes.</p> <p>12 THE INTERPRETER: He is pointing at the refrigerator. The</p> <p>13 refrigerator is a square/rectangular shape.</p> <p>14 THE CHAIRMAN: Yes, that's on the port side by the door?</p> <p>15 A. That's right. And the cooker or the pot, whatever it</p> <p>16 is, would be below, in front of the door of the -- in</p> <p>17 front or beside the refrigerator.</p> <p>18 MR SHIEH: So it would be placed on the floor next to the</p> <p>19 refrigerator?</p> <p>20 A. That's right.</p> <p>21 Q. We have a closer look at the refrigerator at page 114.</p> <p>22 Basically if this photo had actually extended further</p> <p>23 down to the floor level, we should be able to see where</p> <p>24 the cooker or the steamer was usually placed?</p> <p>25 A. Yes.</p>	<p>1 of journeys, to --</p> <p>2 A. Yes.</p> <p>3 Q. I take it that prior to this journey, you already knew</p> <p>4 the coxswain, the engineer and the other sailor, because</p> <p>5 you were employed by the same employer?</p> <p>6 A. Yes, we had been colleagues for a few years already.</p> <p>7 Q. How would you describe your working relationship with</p> <p>8 them?</p> <p>9 A. Just like ordinary colleagues.</p> <p>10 Q. Were you particularly friendly with any one of them, or</p> <p>11 having a grudge or disagreement with any other?</p> <p>12 A. No disagreement, no, but on the other hand, we just nod</p> <p>13 and then chat a little bit when we meet, and that's all</p> <p>14 there is to it.</p> <p>15 Q. Was the coxswain eating at any time during that journey</p> <p>16 which departed from Central at 8 o'clock on 1 October?</p> <p>17 A. No.</p> <p>18 THE CHAIRMAN: What time was it that the three of you, the</p> <p>19 remainder, had dinner? What time?</p> <p>20 A. Between 5 and 6. Because we wanted to, you know, get</p> <p>21 our dinner out of the way when it was daytime.</p> <p>22 THE CHAIRMAN: Do you know if there's any reason why the</p> <p>23 coxswain didn't join you for dinner at that time?</p> <p>24 A. Because the coxswain was thinking that during the time</p> <p>25 of the fireworks display, there would be a window of</p>
<p>Page 70</p> <p>1 Q. From the way it sounds, since you don't normally serve</p> <p>2 on Sea Smooth, is this arrangement of having a cooker or</p> <p>3 a steamer on board a rather common phenomenon for Hong</p> <p>4 Kong &amp; Kowloon Ferry vessels?</p> <p>5 A. That, I wouldn't know. But on that particular day, it</p> <p>6 was like that.</p> <p>7 Q. How about other vessels?</p> <p>8 A. On other vessels, they would use electric cooker.</p> <p>9 MR SHIEH: "Rice cooker".</p> <p>10 THE INTERPRETER: "Rice cooker", thank you.</p> <p>11 MR SHIEH: Do you know what was stored inside the</p> <p>12 refrigerator?</p> <p>13 A. Yes, vegetables and frozen meat, something like that.</p> <p>14 Q. You mean sometimes crew would bring their home-made</p> <p>15 meals to work, put them in the fridge, and come meal</p> <p>16 time, put them in the steamer and heat it up as their</p> <p>17 meal?</p> <p>18 A. Yes.</p> <p>19 Q. Talking about lunch. Did the eating take place during</p> <p>20 a voyage?</p> <p>21 A. No. Usually when the vessel is berthed, is being</p> <p>22 docked, there will be a time for us to take our lunch,</p> <p>23 for as long as is allowed.</p> <p>24 Q. So basically you would squeeze whatever time that there</p> <p>25 is available outside of -- between journeys or outside</p>	<p>Page 72</p> <p>1 time for him to heat up his dinner.</p> <p>2 THE CHAIRMAN: And did he say something to that effect?</p> <p>3 A. No, he didn't say that.</p> <p>4 THE CHAIRMAN: So you just guessed that?</p> <p>5 A. Yes, you're right. I was speculating. Because he</p> <p>6 hadn't taken his dinner.</p> <p>7 MR SHIEH: On the question of that table the engineer used</p> <p>8 to fill in the log, I may just have located one or two</p> <p>9 photographs of that. Could the witness be shown police</p> <p>10 photo album I, page 31.</p> <p>11 A. Yes, I can see.</p> <p>12 Q. On the right-hand side, about one-third up, that is --</p> <p>13 the white object is the table; correct?</p> <p>14 A. Yes, I can see it.</p> <p>15 Q. That is the table; correct?</p> <p>16 A. Yes.</p> <p>17 (Chinese spoken).</p> <p>18 Q. Is there a chair of some sort that the --</p> <p>19 THE INTERPRETER: Sorry, counsel. The witness just</p> <p>20 supplemented his answer, pointing at the next</p> <p>21 photograph, with the table, on page 30.</p> <p>22 A. This is much clearer.</p> <p>23 MR SHIEH: Page 30, yes. The bottom left-hand corner;</p> <p>24 right?</p> <p>25 THE INTERPRETER: He is pointing at the white shape,</p>

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<p>1 rectangular shape in white colour on the left-hand side 2 of the photo. 3 MR SHIEH: Yes. Where would the engineer be sitting or 4 squatting when he filled out the log? 5 A. It would be on the right-hand side. That would be 6 outside the photo. 7 Q. Right, right. Okay. On the right-hand side, so -- 8 I see. Thank you. That would be where the entrance 9 was? 10 A. That's right. It would be at the entrance, but there 11 should be a railing there. 12 Q. Just while we're at this photograph at page 30, we can 13 see some newspapers on the floor. 14 A. Yes, I can see them. 15 Q. On the day in question, did people read newspapers in 16 the wheelhouse? 17 A. Yes, they did that during daytime but not in the 18 evening. 19 Q. And the wheelhouse lights were all switched off? 20 A. Yes, it would be too dark for them to, you know, read 21 newspapers. 22 Q. Yes. I was about to ask, the lights were all switched 23 off in the wheelhouse? 24 A. Yes, yes, that's right. 25 Q. Apart from the light from the console?</p>	<p>1 staircase; correct? 2 A. No, there was one more step to go. 3 Q. Okay. 4 "A few seconds later, there was a loud crash and 5 I fell on the floor." 6 A. Yes. 7 Q. And paragraph 21: 8 "I did not hear anything before the collision, such 9 as a horn or whistle." 10 A. Correct. 11 Q. Did you feel any swerving or turning of the vessel? 12 A. No, I didn't feel any of it. 13 Q. Did you look out of the window in any way when you felt 14 that the vessel was slowing down? 15 A. No, I didn't do it, because -- you see, the vessel 16 itself inside was very bright, and -- because it was 17 very bright inside the vessel, so you couldn't see 18 anything when you were looking outside. 19 Q. Paragraph 22: 20 "The passengers were shocked. Some of them had 21 fallen over in the collision. I asked if there were any 22 injuries. Most of them looked anxious. I tried to calm 23 the passengers down and helped them as much as I could." 24 That's correct; right? 25 A. Yes.</p>
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<p>1 A. Yes. 2 Q. Can I ask you to look at paragraph 20 of your witness 3 statement. 4 "I left the wheelhouse and intended to go to the 5 main deck passenger cabin." 6 Can I get the terminology right. The main deck 7 cabin was on the same level as the wheelhouse? 8 A. Two different decks. The main deck cabin should be on 9 the upper deck. The main passenger deck should be on 10 the lower deck. 11 THE CHAIRMAN: You board the vessel on the main deck, and 12 you go up to the upper deck and to the wheelhouse; is 13 that the position? 14 A. That's right. 15 MR SHIEH: And therefore, in the next sentence, "When 16 I reached the last step of the staircase leading to the 17 lower deck, I found that the vessel slowed down very 18 suddenly", the lower deck there actually is the same as 19 the main deck? 20 A. That's right. The lower deck would be the main 21 passenger deck. 22 Q. Thank you. And at that time, you said you felt the 23 vessel slow down very suddenly. 24 A. Yes. 25 Q. So you have already finished descending from that set of</p>	<p>1 Q. Next paragraph, first sentence: 2 "The master said we had collided with another boat." 3 A. Yes. 4 Q. At that point in time, where were you, when the master 5 said this? 6 A. I was aware that our vessel had hit something, some 7 object, but I don't know what it was. I went around to 8 check on the passengers, and then I went upstairs. 9 Q. And then you went upstairs, back to the level where the 10 wheelhouse was? 11 A. That's right, yes. Right. 12 Q. Did you enter the wheelhouse, or did the master shout 13 out, or did the master come out? 14 A. The coxswain was shouting from inside the wheelhouse. 15 He poked his head out of the door and then shouted. 16 Q. What did he shout? 17 A. I don't remember. 18 Q. You remember well enough to say that he said there was 19 a collision? 20 A. Yes, I remember that we did hit something and then 21 I checked on the passengers, and then I don't remember 22 exactly what the captain said, because it was very 23 chaotic then. 24 THE CHAIRMAN: What was causing the chaos? 25 A. Because the passengers were all screaming.</p>

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<p>1 MR SHIEH: The wheelhouse of the Sea Smooth, it was 2 enclosed; correct? 3 A. No, no. There were two doors on either wing of the 4 wheelhouse, opening out. 5 Q. I know, but for the journey in question, the doors were 6 closed and the windows were all closed. 7 A. Yes. 8 Q. So if a whistle or horn had been sounded, is it possible 9 that you would not have been able to hear it? 10 A. Possible. 11 Q. Leaving aside the wheelhouse, for the actual passenger 12 deck, it was also enclosed, right? All the windows were 13 closed? Or were some of them open? 14 A. It wouldn't be. It's all closed up. 15 Q. All closed up, all the windows? 16 A. Yes. 17 Q. Both decks? 18 A. Yes, this is right. You can't slide the window open. 19 You can't do that. 20 Q. Coming back to what you heard from the master. The 21 first sentence of paragraph 23 says: 22 "The master said we had collided with another boat." 23 I want to find out, first of all, do you still 24 maintain that sentence; that is to say, the master did 25 say that your vessel had collided with another boat?</p>	<p>1 Q. What did he shout? 2 A. I don't remember what he was shouting about. 3 Q. Did you hear the coxswain shout or say anything about 4 how that incident came about? 5 A. I can't really remember. 6 Q. Let me tell you this. Sometimes after an impact or 7 an accident, people's immediate reaction would be to 8 say, "That guy is mad", or, "How come he didn't do this, 9 or immediate exclamations which reflected on what had 10 happened. Or someone might say, "Gosh, I've got myself 11 into deep trouble", or something like that. 12 A. Yes, okay. "Bad shit", means something very bad 13 happened. 14 THE CHAIRMAN: What you're being asked is, thinking about 15 it, did the coxswain say anything along any of those 16 various lines? 17 A. I can't really remember. 18 MR SHIEH: I think the immediate response was that the 19 captain did say something, and then I think 20 Mr Interpreter was having difficulty finding an adequate 21 translation for "dai ga fo" in Cantonese -- 22 THE CHAIRMAN: I wonder whether the witness is simply 23 joining in your line of the various possibilities as 24 opposed to attributing it to the coxswain. 25 MR SHIEH: I think he did say, "Ah, yes, dai ga fo".</p>
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<p>1 A. It is possible that he did say that, but I can't really 2 remember. 3 Q. You see, I'm interested in finding out the circumstances 4 where you heard him say this, where he was, whom he was 5 with, and what you observed. 6 Let me take it in stages. First of all, do you 7 remember after that impact -- you remember you entering 8 the wheelhouse again? Do you remember whether you had 9 entered the wheelhouse again? 10 A. Yes, but afterwards. 11 Q. How long afterwards? 12 A. That is, when the vessel started engine again and then 13 returning to the pier. At that time, I was in the 14 wheelhouse. 15 Q. Right. But let's rewind to an earlier point in time. 16 A. No. If it is a little further backward, I wasn't in the 17 wheelhouse. 18 Q. Right. So you were not aware as to who was in the 19 wheelhouse immediately following the impact? 20 A. Correct, I wasn't aware. 21 Q. Now, you said you couldn't remember or you weren't quite 22 sure whether the master did say there was a collision 23 with another boat. You also said that you heard someone 24 shout from the wheelhouse, just now? 25 A. That's right. That was the coxswain himself.</p>	<p>1 THE INTERPRETER: But then the remark, "dai ga fo", was -- 2 MR SHIEH: Is something like "Oh, my God". 3 THE INTERPRETER: The witness has just said "My God", the 4 translation for "dai ga fo" was his own utterance, not 5 from the captain. 6 MR SHIEH: I see. Okay. 7 THE CHAIRMAN: So what it comes to is this: the captain said 8 something, but you can't remember what it was? 9 A. You are right. He did say something, but I can't 10 remember what he said. 11 THE CHAIRMAN: Thank you. 12 MR SHIEH: But that made you realise something very 13 unpleasant had happened? Because of what he said, you 14 realised something unpleasant had happened? 15 A. Because he was shouting in great panic. 16 Q. Shouting in panic? 17 A. In panic, that's right. 18 Q. But you can't remember the words? 19 A. No, I can't remember. 20 Q. Do you remember whether or not what he said gave you 21 an idea as to the cause for the incident? 22 A. No. 23 Q. Paragraph 23, I continue: 24 "I went to the upper deck and saw one passenger 25 suffered from minor injuries. Sea Smooth then started</p>

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<p>1 listing to port with water coming in from the bow of the 2 main deck into the passenger cabin and the passengers 3 were getting very worried. The master then ordered the 4 passengers to put on their life jackets. I helped some 5 of the passengers to put on the life jackets." 6 You can see that? 7 A. Yes. 8 Q. How did the master order the passengers to put on their 9 life jackets? Was it through the public announcement 10 system, or did he come out of the wheelhouse? 11 A. It didn't seem that he had turned on the loud hailer 12 system, the broadcasting system, speaker. Possibly 13 I couldn't hear it. 14 Q. Possibly you couldn't hear what? 15 A. I don't know whether he had broadcast the order, you 16 know, through the speaker system, loudspeaker system. 17 But I myself didn't hear any of it. 18 Q. Sorry, but in that sentence you said: 19 "The master then ordered the passengers to put on 20 their life jackets." 21 A. Yes. He was not using the loudspeaker system. 22 Q. He was just shouting? 23 A. That's right, that's right. He was shouting very 24 loudly. 25 Q. Was he in the wheelhouse, or did he come out of the</p>	<p>1 deck? 2 A. I was sprawled on the floor. 3 Q. And then you stood up again; right? 4 A. That's right, I stood up again. 5 Q. And then? 6 A. I felt that we had hit something and there was a loud 7 bang, and then the ship violently shook, and then 8 I walked towards the stern of the vessel -- I walked to 9 the stern of the vessel to see if anyone had been hurt, 10 and I saw that no, no-one was hurt, so I calmed them 11 down and then I walked up to the second floor to check 12 on other passengers. 13 Q. To get to the staircase where you could walk up to what 14 may be called the upper deck, you have to walk from the 15 stern to the middle of the fore; right? 16 A. No. 17 Q. No, can I start again. I put it badly. 18 You patrolled the vessel, the main deck or what's 19 called the lower deck, to see whether anyone was 20 injured; correct? 21 A. That's right. 22 Q. As part of that exercise, you went to the stern? 23 A. That's right. 24 THE INTERPRETER: The witness is asking counsel, by the 25 reference "stern", is this the portion that you are</p>
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<p>1 wheelhouse? 2 A. He poked his head out. 3 Q. Could you see the engineer? 4 A. He was with me, doing the rounds on the second floor, to 5 check if passengers had been hurt. But later on I don't 6 know where he was. 7 Q. What do you mean by "the second floor"? 8 A. The second deck. 9 Q. The deck where the wheelhouse was located? 10 A. Yes. 11 Q. That was after the collision? 12 A. Yes, that's right. After the collision. 13 Q. But at the point of impact, at the bottom of the 14 staircase, you were alone, not with any other member of 15 the crew? 16 A. No, I was with the other two. We descended the stairs, 17 all three of us. 18 Q. I see. All three of you descended together, and you 19 were basically near each other when the impact took 20 place? 21 A. Two of them were in front of me. I was the last one. 22 Q. Doing the best you can, after the collision -- can you 23 describe your movement after the collision? You were at 24 the bottom of the staircase. You fell to the floor. 25 Then what? You climbed up the staircase to the upper</p>	<p>1 referring to (indicates)? 2 THE CHAIRMAN: "Yes", is the answer. 3 MR SHIEH: Well, yes. 4 THE CHAIRMAN: The back of the boat, the blunt end. 5 MR SHIEH: The back of the boat. 6 A. Not at the shaded area, because this area, there 7 wouldn't be any passengers in this area. 8 Q. I understand. So wherever there were passengers, you 9 went, near the end? 10 A. Yes, I did. 11 Q. Right. So after checking that area, if you want to go 12 back up to the wheelhouse or to go to the upper deck 13 again, you would have to walk back to a position near 14 the fore of the vessel; correct? 15 A. Yes. 16 Q. That explains your own movements immediately following 17 the collision. 18 A. Yes. 19 Q. Can you tell us about whether you were aware of what 20 your other two fellow members of crew did immediately 21 following the impact? Start with the other sailor. 22 THE INTERPRETER: The witness just pointed his finger at 23 this spot on the diagram (indicates). 24 A. Immediately before the collision, that's where he was 25 standing.</p>

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<p>1 THE CHAIRMAN: You're pointing at the main deck, on the port 2 side forward? Is that right? 3 A. Around 36, on the port side, right. On the port bow 4 side, above the word "cargo area", you can see the 5 figure 36. I don't know whether he was in front of 36 6 or behind 36, but he was around there. 7 MR SHIEH: Were you aware of what he did afterwards? 8 A. He told me that he had fallen down. 9 Q. Afterwards? Afterwards, he told you? 10 A. That's right. Afterwards, he told me that he also had 11 fallen down. 12 Q. Right. But what did he then do by way of checking 13 things or running around? 14 THE CHAIRMAN: That you saw. 15 A. I didn't notice what he was doing. 16 MR SHIEH: Okay. So that was the other sailor. How about 17 the engineer? 18 A. He was doing the inspection of the vessel, together with 19 me. 20 THE CHAIRMAN: Are we talking now about the engineer? 21 MR SHIEH: Yes, Mr Chairman. Because the witness said he 22 didn't know about what the other sailor did. 23 THE CHAIRMAN: I follow that. You called him sailor, but 24 you're talking about the engineer? 25 MR SHIEH: Yes, I'm now moving on to the engineer.</p>	<p>1 A. Most of the time, the engineer. 2 THE CHAIRMAN: And what did he do in order to check 3 compartments that were beneath the water, or partly 4 beneath the water? 5 A. He had to open the cover. 6 THE CHAIRMAN: The manhole cover? 7 A. That's right, the manhole cover. 8 THE CHAIRMAN: Was that on the port side? 9 A. Here. 10 THE INTERPRETER: The witness was pointing at the diagram on 11 the screen. You can see two little circles under figure 12 109, indicating that they are the manholes. 13 MR SHIEH: Yes. 14 THE CHAIRMAN: So he lifted up manhole covers on the port 15 side forward; is that it? 16 A. That's right. He opened up, lifted up the cover and 17 then looked down to see whether there was water. 18 MR SHIEH: Some water actually entered the passenger cabin; 19 is that correct? 20 A. Yes, but the water concentrated on the aft side of 21 the -- the bow. The bow section of the vessel. 22 THE INTERPRETER: The witness was pointing at number 123. 23 A. The water concentrated in the first row. 24 THE CHAIRMAN: Yes. 25 MR SHIEH: Mr Wong, focusing on the movement of the</p>
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<p>1 THE CHAIRMAN: Yes. 2 MR SHIEH: The engineer basically performed the similar task 3 as you did, namely patrolling the lower deck or the main 4 deck, seeing whether or not anyone had been injured, 5 checking everything was all right; yes? 6 A. Yes. 7 THE CHAIRMAN: Did anyone check on damage to the vessel? 8 A. Yes. 9 THE CHAIRMAN: Who? 10 A. The engineer went back into the wheelhouse and there was 11 an alarm there indicating that cabin 1 and cabin 2, 12 there was water ingress, water coming in cabin 1 and 13 cabin 2. 14 THE CHAIRMAN: Did you see what he did after that? 15 A. I remember that he shouted to switch on the water pump. 16 THE CHAIRMAN: By that you mean the bilge pump? 17 A. Yes, that's right. The pump to pump the water out. 18 THE CHAIRMAN: Did you see him do anything else to check 19 damage? 20 A. Yes. The engine cabin and then the cabin aft of the -- 21 before the engine cabin, the name I remember is the 22 refrigerated cabin, and then there is also cabin 1 23 and 2, and then we can see the water was coming in the 24 cabins. 25 THE CHAIRMAN: Who was doing this checking?</p>	<p>1 engineer. You said he actually patrolled the lower deck 2 or the main deck together with you. 3 A. Yes. 4 Q. So were you actually together when you conducted this 5 patrolling? 6 A. Yes. 7 Q. Right. When he checked the manholes, it was actually by 8 opening the manholes on the lower deck; right? 9 A. We hadn't known that actually the water was coming in. 10 It was only after we had finished our patrol of the 11 vessel, and there were passengers shouting that there 12 was water coming in in the aft part, in the bow section 13 of the vessel. 14 Q. Yes. So the engineer moved to let's say near 123 on the 15 right-hand side of the bottom diagram and opened the 16 manhole, and then he could see the water there? 17 A. That's right. He patrolled the vessel together with me. 18 I don't know whether he opened up the manhole up there. 19 (Chinese spoken). 20 THE CHAIRMAN: Don't worry about that. He'll tell us that. 21 A. That's right. He was -- 22 MR SHIEH: You told us that you walked up the stairs. 23 THE INTERPRETER: The witness was pointing at the lower part 24 of the diagram, where it shows the stairs. 25 MR SHIEH: Yes. And the engineer also went up the stairs;</p>

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<p>1 right?</p> <p>2 A. Yes, he did.</p> <p>3 Q. Because you said actually there were alarms from the</p> <p>4 wheelhouse.</p> <p>5 A. Yes.</p> <p>6 Q. So he actually entered the wheelhouse; correct?</p> <p>7 A. After he had done the patrolling, he went back up to the</p> <p>8 wheelhouse and reported to the captain that two</p> <p>9 passengers had been hurt.</p> <p>10 Q. That was him and the coxswain together in the</p> <p>11 wheelhouse?</p> <p>12 A. After the patrolling, that's right.</p> <p>13 Q. Right. So you would not be able to tell us what he</p> <p>14 might have seen inside the wheelhouse; correct?</p> <p>15 A. That's right. I wouldn't know. But he went back out</p> <p>16 and told me that alarm number 1 and alarm number 2 were</p> <p>17 on.</p> <p>18 Q. Now, there is one point I wish to ask you, which is</p> <p>19 this. We have heard evidence from some of the</p> <p>20 passengers on board the Sea Smooth who were sitting in</p> <p>21 the lower deck. First of all, before I tell you that,</p> <p>22 can I ask you -- you were wearing uniform that day;</p> <p>23 correct?</p> <p>24 A. Yes.</p> <p>25 Q. What is the colour of the uniform?</p>	<p>1 A. I don't remember I ever said that.</p> <p>2 Q. But I was interested in your immediate reaction.</p> <p>3 Because, leaving aside whether it is "again Hongkong</p> <p>4 Electric" or "probably Hongkong Electric", you had in</p> <p>5 mind something about Hongkong Electric?</p> <p>6 A. Yes, that's right. You are right. I probably would</p> <p>7 have that kind of reaction.</p> <p>8 Q. What was it about Hongkong Electric that might have or</p> <p>9 could have triggered that reaction from you?</p> <p>10 A. I may be doing that, you know, on impulse. It just, you</p> <p>11 know, comes right out of my mouth.</p> <p>12 Q. You see, sometimes impulse tells people a lot about what</p> <p>13 is in your mind deep inside.</p> <p>14 A. I won't make any judgment on that.</p> <p>15 Q. Had there been any prior incidents involving dangerous</p> <p>16 encounters, close-quarter situations involving Hong Kong</p> <p>17 &amp; Kowloon Ferry vessels and Hongkong Electric vessels?</p> <p>18 A. Since both were using the same course, of course there</p> <p>19 will be close encounters. But it wouldn't be close</p> <p>20 enough, you know, to result in a collision.</p> <p>21 THE CHAIRMAN: Were you a witness to any of these close</p> <p>22 encounters between Hongkong Electric vessels and ferries</p> <p>23 that you were on?</p> <p>24 A. Rarely.</p> <p>25 THE CHAIRMAN: So when was --</p>
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<p>1 A. Deep blue.</p> <p>2 Q. Blue, all right. The passengers on board the Sea Smooth</p> <p>3 who sat in the lower deck said that 10-20 seconds after</p> <p>4 the collision, there was a male crew member wearing blue</p> <p>5 uniform, 40-odd years old, walking from the back of the</p> <p>6 vessel towards the forward end of the vessel, muttering</p> <p>7 "It's Hongkong Electric again".</p> <p>8 I was corrected by Mr Sussex, actually: only one</p> <p>9 passenger gave evidence and in fact the other gave</p> <p>10 a statement but wasn't called. That's the wife.</p> <p>11 Can this be translated? Only one of the Sea Smooth</p> <p>12 passengers said that.</p> <p>13 Now, question: was that you?</p> <p>14 A. I wouldn't put it that way. I might possibly have said,</p> <p>15 "Probably it is Hongkong Electric". But I wouldn't say</p> <p>16 "It is Hongkong Electric again". I'm not the person</p> <p>17 that would say such a thing.</p> <p>18 Q. Right. Pause here. Did you hear other people, any</p> <p>19 other of your fellow crew members, say, "It's Hongkong</p> <p>20 Electric again"?</p> <p>21 A. No.</p> <p>22 Q. Right. Coming to you. You say you might have said</p> <p>23 something like, "Probably Hongkong Electric", but you</p> <p>24 would not have said something like, "It's Hongkong</p> <p>25 Electric again".</p>	<p>1 THE INTERPRETER: Sorry, I will translate it as "seldom".</p> <p>2 THE CHAIRMAN: Yes, all right.</p> <p>3 When was the last occasion when you personally were</p> <p>4 involved in a close encounter with vessels passing each</p> <p>5 other in that way, you on the ferry and Hongkong</p> <p>6 Electric being the other vessel?</p> <p>7 A. A long time ago. I can't remember.</p> <p>8 THE CHAIRMAN: In terms of years?</p> <p>9 A. I really can't remember.</p> <p>10 THE CHAIRMAN: Very well.</p> <p>11 MR SHIEH: Earlier you said "since we were both on the same</p> <p>12 course". You mean --</p> <p>13 THE CHAIRMAN: I think he said "both used the same course".</p> <p>14 THE INTERPRETER: Yes, "used the same course".</p> <p>15 MR SHIEH: And there had been rather close encounters, but</p> <p>16 it wouldn't be close enough to result in a collision;</p> <p>17 right?</p> <p>18 A. Yes.</p> <p>19 Q. But how risky, how dangerous were those incidents? Does</p> <p>20 any one come to mind which particularly impressed you or</p> <p>21 struck you? Any particular incident?</p> <p>22 A. No. I can't remember.</p> <p>23 Q. For example, had there been incidents which had resulted</p> <p>24 in, for example, the need to sound the horn?</p> <p>25 A. No, I've never seen that. I never encountered that.</p>

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<p>1 Q. Or having to take collision-avoidance action, such as 2 taking a hard turn to starboard? 3 A. Hard turn at a great angle, drastic angle, no. But slow 4 turns, gradual turns, yes. 5 Q. So there have been situations where vessels belonging 6 to -- well, as far as you could tell -- Hong Kong 7 &amp; Kowloon Ferry have had to take collision-avoidance 8 action by taking turns to starboard? 9 A. I'm not sure whether the incidents in which gradual 10 turns took place, whether they can be called "incidents 11 of avoid collision". 12 Q. As far as you are aware, is there any rivalry or bad 13 blood between coxswains navigating Hong Kong &amp; Kowloon 14 Ferry vessels on the one hand, and coxswains navigating 15 Hongkong Electric vessels on the other, given that they 16 used the same course regularly? 17 A. On this, I don't know. I am not sure. 18 Q. Have you heard? 19 A. No. 20 Q. Were there other ferry or vessel operators whose vessels 21 would navigate in that area, Yung Shue Wan? 22 A. There was a cargo vessel carrying bulk goods. Also 23 there is a ferry line between Yung Shue Wan and 24 Aberdeen. Aberdeen and Yung Shue Wan. 25 Q. That route was operated by Hong Kong &amp; Kowloon Ferry?</p>	<p>1 A. Yes. Sometimes a little in, a little nearer the coast, 2 sometimes a little further away from the coast. That's 3 what I know. 4 Q. You mean sometimes it would steer nearer Shek Kok Tsui? 5 A. Yes. But sometimes, on the other hand, it would be 6 further away from Shek Kok Tsui. 7 THE CHAIRMAN: Did you see the vessel with which your vessel 8 had collided that night? 9 A. No, I didn't. 10 THE CHAIRMAN: So you had no idea what this other vessel 11 was? 12 A. No, I wouldn't know. 13 THE CHAIRMAN: Thank you. 14 MR SHIEH: Mr Wong, I know it's a rather alien experience 15 giving evidence in a courtroom setting, but don't let 16 what we have shown you by way of a chart influence your 17 recollection as to what had in fact gone through in your 18 mind. 19 A. Yes, it did happen. Yes, that's right. I came under 20 the influence by the things being shown to me. 21 Q. You see, Mr Wong, I want to be entirely fair to you. 22 What you just told us suggests that, leaving aside 23 whether you knew it was called the Lamma IV, that you 24 were actually aware of what might be called "the usual 25 course" taken by Hongkong Electric vessels, and that on</p>
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<p>1 A. No, it's Tsui Wah. Operated by Tsui Wah. 2 Q. Right. So Hongkong Electric was not the only vessel 3 operator which used that course? 4 A. Yes. 5 Q. Why would Hongkong Electric come to mind in your earlier 6 answer? Because if there's a collision, it could just 7 as well have been any old operator. 8 A. I wouldn't know, okay, but around that period of time, 9 most likely it would be the Hongkong Electric vessels 10 that were using that course. But anyway, it is my 11 personal speculation. 12 (Chinese spoken). 13 Q. If you want to see the chart, it's expert bundle 1. 14 THE INTERPRETER: The witness has just said that the reason 15 why he had given that response, "Probably it's Hongkong 16 Electric again", probably had to do the fact that he had 17 seen that the Lamma IV, its course was way out. 18 A. I don't know how to describe it. 19 THE CHAIRMAN: Way out of what? 20 A. Between Shek Kok Tsui and -- Lamma IV was way out. It 21 is further than -- but it was only after you have shown 22 me this diagram did I come to have this impression that 23 the Lamma IV was further away from its usual course. 24 MR SHIEH: Hang on a second. So you were aware of what you 25 have called the "usual course" of the Lamma IV?</p>	<p>1 that night, the vessel that collided with you was not 2 following what you had called "the usual course". 3 A. No. You see, I mean, in the evening, it's hard to tell 4 because things are not so clear in the evening. 5 THE CHAIRMAN: Mr Shieh, I think we've exhausted this vein 6 of the mine, before we go down any deeper. It's clear 7 that the witness is allowing ex post facto 8 rationalisation to intrude. 9 MR SHIEH: Yes, having seen this and perhaps -- 10 THE CHAIRMAN: Yes. And perhaps talked to others. 11 MR SHIEH: Yes, perhaps. 12 Mr Wong, could I now then move on to a separate 13 topic. Paragraph 24, you said: 14 "I did not see the boat that had collided with us." 15 A. Yes. 16 Q. "After Sea Smooth remained stationary for some time, 17 perhaps 5-10 minutes, the passengers were getting very 18 worried, and some were angry. They said we might sink 19 and must go to the pier at Lamma Island which can be 20 seen out of the window. The master then sailed to the 21 pier at Yung Shue Wan where the passengers disembarked." 22 A. Yes. 23 Q. By that time, in other words let's say minutes after the 24 impact, you were already aware that there had been 25 a collision with another vessel?</p>

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<p>1 A. That's right. I became aware that we had a collision 2 with another vessel, but I didn't know what that vessel 3 was. 4 Q. It was bad enough to result in water ingress into the 5 Sea Smooth. 6 A. Yes. 7 Q. Did it occur to you to try to look around the vessel to 8 see where the other vessel might have been? 9 A. No. 10 Q. Why not? 11 A. Because I was taking care of the passengers inside the 12 cabin. 13 Q. And it didn't occur to you, for example, to see whether 14 or not any passengers on the other vessel might have 15 fallen into the sea, which might require assistance such 16 as lifebuoys? 17 A. Really, it didn't occur to me. 18 MR SHIEH: Mr Chairman, I can see that it's now 4.30. I've 19 come to the final paragraph of the statement. 20 THE CHAIRMAN: What we're minded to do -- forgive me for 21 interrupting -- is this. We indicated on Friday that we 22 would sit until 5.30 this week and onwards, but that we 23 would take into account the position of the crew of the 24 Sea Smooth. But this witness has only been giving 25 evidence since midday, so we're minded to carry on until</p>	<p>1 MR SHIEH: Yes. Yes, second margin from the left. And 2 then, Mr Chairman, you can see -- 3 THE CHAIRMAN: Then in the middle -- 4 MR SHIEH: It runs to the last bit, the third column from 5 the right. 6 THE CHAIRMAN: Yes. 7 MR SHIEH: Mr Chairman, you can see "2001". 8 THE CHAIRMAN: Yes. 9 MR SHIEH: That would be the departure time of that 10 particular journey. 11 THE CHAIRMAN: Right. So. 20:01, 95 passengers; is that 12 how we read that? 13 MR SHIEH: 95 passengers, yes. 14 THE CHAIRMAN: Do you see this entry in the log, Mr Wong? 15 A. Which entry? 16 THE CHAIRMAN: "2001". 17 A. Yes. 18 MR SHIEH: And it's from Central, because the column on the 19 left-hand side says "from", and then "Chung" means 20 "Central". 21 A. Yes, it should be. 22 Q. The next row would be "to", and we can see "Yung", 23 that's Yung Shue Wan. 24 A. It should be. 25 Q. And arrival time would be 20:25?</p>
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<p>1 5.30, but we will take a short break now, to allow him 2 and everyone else a little break, and then we'll resume. 3 So, Mr Wong, what we're going to do is take 4 a 10-minute break now and then we'll continue until 5.30 5 this afternoon. 6 10 minutes. 7 (4.30 pm) 8 (A short break) 9 (4.40 pm) 10 THE CHAIRMAN: Mr Wong, you continue to testify according to 11 your affirmation. 12 A. Yes. 13 THE CHAIRMAN: Yes, Mr Shieh. 14 MR SHIEH: Mr Chairman, just to follow up one point; that is 15 to say, the log of Sea Smooth. We have been able to 16 track down the reference. It is police bundle N(I), 17 page 3373. 18 Unfortunately we don't seem to have the English 19 translation. 20 THE CHAIRMAN: Which is the page that has the entry for 21 1 October? 22 MR SHIEH: Page 3374. Mr Chairman, you can see in the top 23 right-hand corner the date "1-10-2012". 24 THE CHAIRMAN: Yes. The time runs down the second margin 25 from the left?</p>	<p>1 A. We have to talk to the engineer, because he is the one 2 that made the entry. 3 THE CHAIRMAN: Have you seen this log book before? 4 A. No. 5 THE CHAIRMAN: When he was making entries in the log book, 6 have you ever seen the kind of entries he makes? 7 A. Because, you see, there was an incident there. So the 8 log book was gone. So I don't know why it's here. 9 THE CHAIRMAN: Perhaps because it was seized by the police. 10 Don't let that worry you. All I'm asking you about is, 11 is this the kind of log book that the engineer would 12 fill in at that little table? 13 A. Yes. 14 THE CHAIRMAN: So he didn't have much to fill in? 15 A. Yes, it would be the record of the voyages of that day. 16 THE CHAIRMAN: And he would do them voyage by voyage? 17 A. Normally, yes. 18 THE CHAIRMAN: Yes, Mr Shieh. 19 MR SHIEH: Mr Wong, I have read out to you the whole of your 20 witness statement that you was presented to this 21 Commission. Is there anything relating to the cause of 22 the collision on 1 October that you would wish to inform 23 the Commission, but which is not contained in this 24 witness statement? 25 A. No.</p>

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<p>1 MR SHIEH: Thank you. 2 Mr Chairman, I have no further questions. 3 THE CHAIRMAN: Thank you. 4 Mr Grossman, do you have an application? 5 MR GROSSMAN: I do, Mr Chairman. The matters I'd like to 6 ask questions upon are: first of all, the qualifications 7 of the witness; secondly, the schedule on that 8 particular day, on 1 October; thirdly, the trip itself; 9 and fourthly, the collision and afterwards. 10 THE CHAIRMAN: Yes, very well. 11 MR GROSSMAN: That may sound a lot, but as always, there 12 won't be a great deal. 13 THE CHAIRMAN: Please proceed. 14 MR GROSSMAN: Thank you. 15 Examination by MR GROSSMAN 16 MR GROSSMAN: Mr Wong, I am representing Hongkong Electric 17 in this hearing. I have a few questions to ask you, 18 perhaps to clarify some of the things you've said. 19 First of all, you've told us about your educational 20 level. Do you read and write Chinese? 21 A. For writing Chinese, not really. 22 Q. But can you read Chinese? 23 A. That, I can manage. But not at any sophisticated level. 24 Q. May I take it then that you don't speak or read English? 25 A. Yes.</p>	<p>1 THE INTERPRETER: We are looking at the Chinese version 2 here. 3 THE CHAIRMAN: Thank you. 4 MR GROSSMAN: Well, the heading says "Guidelines on 5 occurrence of vessel collision". You can see that, can 6 you? 7 A. Yes. 8 THE CHAIRMAN: Take your time, Mr Wong, to familiarise 9 yourself with what you're reading. Take your time. 10 We'll wait. If time won't help you, say so. 11 MR GROSSMAN: Are you able to read it? 12 A. Part of it. 13 Q. All right. I just want to know if you're familiar with 14 this document. Have you seen it? Has anybody explained 15 it to you? The heading is -- this is in English, of 16 course -- "Guidelines on occurrence of vessel 17 collision". 18 A. No. 19 Q. Then if we can go -- and I'm looking at the English 20 again, because I don't know where it is in the 21 Chinese -- to page 3949-4, one sees "Guidelines when 22 cabin is on fire". Have you been given any training on 23 that topic, of when the cabin is on fire? 24 THE INTERPRETER: Counsel, for your information, we are 25 looking at the Chinese original on page 3946.</p>
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<p>1 Q. Thank you. Now, on this vessel, the Sea Smooth, were 2 you designated as sailor 1 or sailor 2? 3 A. We don't have that kind of designation. Usually we just 4 are posted there. 5 Q. I see. The reason I ask is perhaps you'd look at police 6 bundle N, page 3949-1. 7 THE CHAIRMAN: What are we looking at? 8 MR GROSSMAN: We're looking at guidelines that are given to 9 the members of the crew of the Hong Kong &amp; Kowloon 10 ferries. 11 This is in English, and I'm simply going to tell you 12 what the headlines say. First of all, these are 13 "Guidelines on occurrence of vessel collision". Has 14 anybody explained these to you before? 15 A. It seems that I have been given a copy of it, but 16 I didn't pay attention. 17 THE CHAIRMAN: Are these not in Chinese? 18 MR SHIEH: The originals are in Chinese, actually. I am 19 trying to locate the Chinese version so it can be 20 projected on the screen. 21 THE CHAIRMAN: Of course. That's only fair to the witness. 22 MR GROSSMAN: He said he doesn't read very well, so 23 I thought it would save -- 24 THE CHAIRMAN: He's probably got a better chance of reading 25 it in Chinese than he has in English.</p>	<p>1 MR GROSSMAN: Thank you. 2 I am just asking about the heading. I'm not going 3 to go through it all. The heading is "... when cabin is 4 on fire". Have you been given any instruction or 5 training on this issue? 6 A. For this document in particular, no, I didn't see it. 7 Never seen it. But, you see, occasionally, sometimes, 8 when the vessel was put on dry dock, we did have these 9 fire drills. 10 Q. I see. Then if we go to the next page in the English, 11 which is page 3949-5, the heading at the bottom of the 12 page is "Guidelines on man overboard". Have you ever 13 been given any instructions how to deal with a situation 14 when somebody falls overboard? 15 A. Yes, somebody told me about what to do on such 16 an occasion. But I have never seen this particular 17 passage. 18 Q. Very well. Now, if you would look, please, in the 19 Holman Fenwick Willan bundle, page 31. I want to look 20 specifically at page 32 in the Chinese, page 33 in the 21 English. It says near the top of: 22 "Posts of crew members in case of emergency and ship 23 abandoning." 24 Have you ever seen this document before, or has 25 anybody explained it to you?</p>

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<p>1 THE CHAIRMAN: I think that's two questions. 2 Have you ever seen the document before? 3 MR GROSSMAN: Have you ever seen the document before? 4 A. Yes, I've seen it before, on board the vessel. 5 Q. Yes. Have you read it? Have you been able to read it? 6 A. Hold on. It seems that I have seen it before. 7 Q. Do you recall if anybody ever explained it to you? 8 A. I don't remember. 9 Q. You see, it talks about the position of the crew if 10 there's an emergency, and on the left-hand side it tells 11 the different functions of different people, you see. 12 There's the coxswain, then the chief engineer, and then 13 sailor 1, and sailor 2. That's why I asked if you were 14 sailor 1 or sailor 2. 15 A. Yes, I understand. 16 Q. Did anybody explain to you that there were different 17 functions for the two sailors? 18 A. When the vessel was put on dry dock, there was no 19 designation of functions or job sites. But when -- 20 (Chinese spoken). 21 MR SUSSEX: I hesitate to interrupt, but I think the 22 translation for "dry dock" should read "survey". 23 THE CHAIRMAN: Very well. 24 Mr Interpreter, would you consider that? What's 25 being suggested is that when you interpret "dry dock",</p>	<p>1 MS LOK: I hate to interrupt. I think the witness said the 2 opposite. He said that when the vessel was put on 3 survey, there was designation of the duties, sailor 1 4 and sailor 2; however, when they go to work on site, 5 there was no such designation. 6 THE CHAIRMAN: Thank you. 7 MS LOK: That was before Mr Sussex clarified. 8 THE CHAIRMAN: Thank you. 9 Can you just confirm that? 10 THE INTERPRETER: Correct. Ms Counsel was right in her 11 translation. 12 THE CHAIRMAN: For the purposes of the annual survey, there 13 was a designation of which crew did what, but not in 14 daily work; is that it? 15 A. No. I am only saying that there will be -- I don't know 16 really how specific designation of job duties between 17 sailor 1 and sailor 2, but that there is such 18 a separation, differentiation of functions there. 19 MR GROSSMAN: But you don't know what your function is, 20 because you don't know if you're sailor 1 or sailor 2. 21 A. Yes. 22 Q. Thank you. On 1 October last year -- I just want to 23 have a look, please, at your schedule. If you would 24 look at Holman Fenwick Willan bundle, page 360. I just 25 want to confirm this. You came on duty at 7.30, and</p>
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<p>1 what should be the interpretation is "survey". Maybe 2 you disagree. 3 THE INTERPRETER: I'll check with -- 4 THE CHAIRMAN: I'm asking you. No, it's a question of 5 interpretation. Whatever it is that the witness has 6 said, should it be interpreted as "when there was 7 a survey, there was no designation of position" or 8 should it read "when there was a dry dock"; which one 9 is it? 10 THE INTERPRETER: To be honest, Mr Chairman, I don't have 11 a clear concept about "dai pai", what the witness told 12 me, the term, the exact meaning of it, I don't -- 13 THE CHAIRMAN: Perhaps you'll clarify with the witness. 14 THE INTERPRETER: That's right. Counsel was right in 15 correcting me. It should be the vessel inspection. 16 Thank you, counsel. 17 MR GROSSMAN: That's the only time this document has been 18 explained to you; is that right? Is that the only time 19 that this document was explained to you? 20 THE INTERPRETER: When it was put on inspection, right? 21 MR GROSSMAN: Yes, on survey. 22 THE CHAIRMAN: I think what he's saying is that when there 23 is a survey inspection, there's no designation of crew. 24 That's what he said. 25 MR GROSSMAN: I see.</p>	<p>1 your first trip was at -- 2 THE CHAIRMAN: Let's get the first question confirmed. 3 Did you come on duty at 7.30? 4 A. Yes. 5 MR GROSSMAN: Your first trip was at 10.15, on the Sea 6 Smooth; do you see that? 7 A. The first trip on that day went to Peng Chau. 8 THE CHAIRMAN: And that was 8.30, wasn't it? 9 A. It's not shown here. 10 THE CHAIRMAN: I appreciate that. 11 A. Here, the schedule shows only the trips that run between 12 Central and Yung Shue Wan. 13 MR GROSSMAN: Yes. 14 THE CHAIRMAN: If you came on duty at 7.30, would the Peng 15 Chau trip be around 8.30, something like that? 16 A. 8.40 from Central to Peng Chau. 17 THE CHAIRMAN: Thank you. 18 MR GROSSMAN: And what time would you get back to Central? 19 A. Around 10 o'clock, I'd be back to Central. 20 Q. And then at 10.15 you take the Sea Smooth to Yung Shue 21 Wan? 22 A. Yes, we turned around and then did the Yung Shue Wan 23 run. 24 Q. Were you on the Sea Smooth for the rest of that day? 25 A. Yes.</p>

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<p>1 Q. So we see that you would have left with the Sea Smooth 2 first of all at 10:15, then 11:15, 12:15, 13:15, 14:15, 3 15:15, and 5 o'clock in the afternoon, and then 4 8 o'clock. 5 I better go through them slowly, Mr Interpreter. 6 The next one is 11:15. 7 A. Yes. 8 Q. Thank you. When did you eat? 9 A. Around 12.30. 10 Q. At 12.30, you would have -- was that at Yung Shue Wan? 11 A. No. During voyage, when the ship was underway. 12 Q. During the voyage. Is this when you were performing 13 your look-out duties? 14 A. Yes. 15 Q. Did you eat with the other members of the crew at the 16 same time? 17 A. No. 18 Q. Would you remember on that particular day -- 19 A. We take turns taking meals. 20 Q. I see. Would the meals be taken in the wheelhouse? 21 A. No. 22 Q. Where would they be taken? 23 A. The main deck, towards the extreme -- the aft side, 24 towards the stern of the vessel. On the open deck. 25 Q. The food would be prepared in that steamer we've been</p>	<p>1 A. I wouldn't know whether he would lend it to somebody 2 else to use it. 3 Q. When he ate his meals, did he eat them from the steamer? 4 Did he use the steamer to prepare his meals? 5 A. Yes, that's right. That's what he would do. 6 Q. That's while he was directing the vessel, while he was 7 navigating the vessel? 8 A. Usually only after the vessel had berthed, would he put 9 the rice in the steamer and then heat it up, and then he 10 will enjoy his meal, usually across the pier. 11 Q. You say "usually". Does that mean sometimes he would 12 utilise it while he was sailing the vessel? 13 A. No, no, no. He would not do that. 14 Q. How do you know? How do you know he wasn't using it 15 when you were engaged in other duties? 16 A. On that particular day, he wouldn't. Because I was the 17 relief sailor on that particular day and I saw it. 18 That's why I said he didn't do it on that day. 19 Q. What do you mean by the fact that you were the relief 20 sailor? What does that mean? 21 A. Because the other sailor was on leave, and I was there, 22 you know, in his stead. 23 Q. But you had other duties. You had other duties to 24 perform. How do you know he wasn't using the rice 25 cooker while you were doing your other duties?</p>
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<p>1 looking at, would it? 2 A. No. I have another one myself. 3 Q. Sorry, I didn't get the last answer. 4 THE CHAIRMAN: "I had another one myself". 5 You had your own electric cooker, did you, steamer? 6 A. Yes, I have my own cooker, rice cooker. 7 MR GROSSMAN: Where did you keep that? 8 A. I put it inside my own bucket, a plastic bucket. 9 THE CHAIRMAN: Where was that kept? 10 A. I kept the bucket at the stern of the vessel 11 (indicates). 12 THE CHAIRMAN: That's the main deck? 13 A. Yes. 14 THE CHAIRMAN: Was that an external part of the vessel? 15 A. Yes. 16 MR GROSSMAN: Who used the steamer that we've seen 17 photographs of today? 18 THE INTERPRETER: The question is "who used" or "did you 19 use"? 20 MR GROSSMAN: Who used it? Who was it for? 21 A. It seems that the coxswain used it. 22 Q. I see. So that steamer that we've looked at was just 23 purely for the coxswain, was it? 24 A. The steamer belonged to the coxswain. 25 Q. Yes. Was he the only one who used it?</p>	<p>1 A. When I was there, I saw that, no, he wasn't doing it. 2 Q. I see. And you remember that he had his lunch in Yung 3 Shue Wan? 4 A. I don't remember. 5 Q. So he may have had his lunch on board, when the vessel 6 was sailing? 7 A. This is just a speculation. I myself wouldn't know. 8 THE CHAIRMAN: From what you observed, you didn't see him 9 eating in the wheelhouse of the vessel that day? 10 A. Correct. 11 MR GROSSMAN: And you've told us that when the steamer was 12 not being used, it was usually placed on the floor near 13 the refrigerator? 14 A. Yes. 15 THE CHAIRMAN: Is that the place that it was used in, or 16 not? 17 A. That, I am not sure. 18 MR GROSSMAN: Well, we've seen the picture of it. It was on 19 the console. What was it doing there, do you know? Why 20 was it there? 21 A. I have told you that I really don't know. No idea why 22 it was there. 23 Q. Could it have been there for any other reason than that 24 it was being used? 25 THE CHAIRMAN: He's being asked to speculate by that</p>

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<p>1 question.</p> <p>2 MR GROSSMAN: Very well. I withdraw it.</p> <p>3 Would you look, please, at police bundle I,</p> <p>4 page 114.</p> <p>5 THE CHAIRMAN: What are we going to look at?</p> <p>6 MR GROSSMAN: We're going to look at the wheelhouse.</p> <p>7 Could we go back to page 112, please.</p> <p>8 I just want to ask you about this settee. I'm right</p> <p>9 in thinking, am I not, that it's placed right behind the</p> <p>10 two chairs?</p> <p>11 A. Yes.</p> <p>12 Q. Can we look at police bundle page 1982, please. This is</p> <p>13 the diagram.</p> <p>14 THE CHAIRMAN: I think perhaps it's a marine bundle</p> <p>15 reference.</p> <p>16 Yes, that's the one.</p> <p>17 MR GROSSMAN: Yes, that's the one. Thank you very much.</p> <p>18 We see there, looking at it from the top, as it</p> <p>19 were, the position of the settee.</p> <p>20 A. Yes, I can see it.</p> <p>21 Q. Yes. The person sitting on the right, on the starboard</p> <p>22 side of the settee, is sitting right behind the</p> <p>23 engineer's chair; is that right?</p> <p>24 THE CHAIRMAN: The unoccupied chair.</p> <p>25 MR GROSSMAN: Unoccupied chair, yes.</p>	<p>1 I mean the starboard side, he wouldn't have been -- his</p> <p>2 vision would not be impaired.</p> <p>3 Q. It does appear that he's got the seat in front of him,</p> <p>4 and if somebody is sitting in it, he may have the</p> <p>5 person's head also.</p> <p>6 THE CHAIRMAN: I think he's simply say if he looks to the</p> <p>7 starboard side, his vision is not impaired. I think</p> <p>8 your point is, if he looks ahead, his vision is</p> <p>9 impaired.</p> <p>10 MR GROSSMAN: Yes, I'm sorry. Thank you, Mr Chairman.</p> <p>11 A. I'm not clear about it.</p> <p>12 Q. Well, would it not make more sense, rather than sitting</p> <p>13 on the starboard side of the settee, simply to stand</p> <p>14 next to the coxswain?</p> <p>15 A. No. On this, I don't know. I'm not sure.</p> <p>16 Q. Why not?</p> <p>17 THE CHAIRMAN: Well, he's sitting on the port side. But we</p> <p>18 will have a witness who comes and tells us, we expect,</p> <p>19 perhaps, that he was on the starboard side, and you can</p> <p>20 pursue it with him.</p> <p>21 MR GROSSMAN: Very well.</p> <p>22 As far as you were concerned, you were sitting on</p> <p>23 the port side, you've told us?</p> <p>24 A. Yes.</p> <p>25 Q. Again, would it not have been more efficient to stand</p>
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<p>1 THE CHAIRMAN: Do you see that? As depicted in this sketch,</p> <p>2 the settee is behind the port side chair, not behind the</p> <p>3 coxswain's chair and the port side chair. Do you see</p> <p>4 that?</p> <p>5 A. You mean in front of the sofa, right?</p> <p>6 THE CHAIRMAN: Yes. The settee is not behind both seats;</p> <p>7 it's only behind the one on the port side of the bridge.</p> <p>8 It may be that you agree or don't agree with that</p> <p>9 depiction.</p> <p>10 A. No. You see, the thing is, the truth is there should</p> <p>11 have been a refrigerator on the port side of the settee,</p> <p>12 and therefore the settee should be moved down a little</p> <p>13 bit and therefore would be right behind that chair.</p> <p>14 THE CHAIRMAN: So with that caveat, you don't agree with</p> <p>15 this depiction?</p> <p>16 A. Agree. Correct.</p> <p>17 THE CHAIRMAN: Thank you.</p> <p>18 MR GROSSMAN: Thank you. Can we go back to police bundle I,</p> <p>19 page 112.</p> <p>20 The person sitting on the starboard side would have</p> <p>21 his view restricted by this seat, would he not?</p> <p>22 Especially if there was someone sitting on it.</p> <p>23 THE INTERPRETER: You mean on the settee, right?</p> <p>24 MR GROSSMAN: Yes.</p> <p>25 A. If he is only concentrating on the right-hand side,</p>	<p>1 next to the engineer's chair, rather than sitting there</p> <p>2 looking through the window at that angle?</p> <p>3 A. Not much difference for me. Because, you see, the chair</p> <p>4 on the port side, near the port side, is empty. That</p> <p>5 one is not occupied.</p> <p>6 Q. Yes, I understand that. But wouldn't you have a better</p> <p>7 view if you stood next to the window rather than sitting</p> <p>8 at the back, having to look at an angle through the</p> <p>9 window?</p> <p>10 A. Even if we were standing, we won't remain standing</p> <p>11 throughout the whole voyage.</p> <p>12 Q. Well, it's not a long voyage.</p> <p>13 A. 20-30 minutes long.</p> <p>14 Q. Would it not be efficient, then, to stand closer to the</p> <p>15 window or stand by the window when you're getting to</p> <p>16 an area, say, where there's a fog light that might</p> <p>17 hamper vision?</p> <p>18 A. I have a clear vision even from where I am seated.</p> <p>19 Q. All right. Let me ask you about the refrigerator. What</p> <p>20 drinks do you keep in there?</p> <p>21 A. Drinking water, you know, where we keep our drinking</p> <p>22 water, we keep it chilled, and sometimes Coca-Cola.</p> <p>23 Q. And beer?</p> <p>24 A. No.</p> <p>25 Q. Any other alcohol?</p>

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<p>1 A. No.</p> <p>2 Q. All right. Sorry, one other question about your vision</p> <p>3 when you're sitting on the settee. Do you keep</p> <p>4 a look-out to the front or to the port side, through the</p> <p>5 windows there?</p> <p>6 A. On the port side.</p> <p>7 Q. So you're looking to the left, are you?</p> <p>8 A. No, no, no. I am looking in front, ahead, and also I am</p> <p>9 looking on the left. I am looking out on the left.</p> <p>10 Q. All right. We'll come back to that in a minute.</p> <p>11 You've told us that when you left the harbour -- I'm</p> <p>12 looking at your paragraph 15 -- there were a lot of</p> <p>13 small boats and yachts coming to other way, and you</p> <p>14 assumed they were going to the harbour to watch the</p> <p>15 fireworks display.</p> <p>16 Mr Interpreter, do you want me to repeat that?</p> <p>17 Perhaps you would just read paragraph 15 again quickly.</p> <p>18 You were aware, were you, that there were going to</p> <p>19 be a lot of unscheduled trips, small craft, pleasure</p> <p>20 vessels, out that night?</p> <p>21 A. That's right. I was aware of it. Around Green Island.</p> <p>22 Q. So besides the scheduled vessels that you were used to</p> <p>23 seeing, there would be a lot of other little vessels,</p> <p>24 and you had to take particular care that night; is that</p> <p>25 not right?</p>	<p>1 should start preparing for berthing and carrying out</p> <p>2 duties.</p> <p>3 Q. Yes. So you just leave one person, with his sight being</p> <p>4 affected, and the other three go away?</p> <p>5 A. I'm not clear about it.</p> <p>6 Q. As an experienced sailor, do you agree with me that if</p> <p>7 there's a feature that causes one not to be able to see</p> <p>8 clearly, the more look-outs the better?</p> <p>9 A. But, you see, we still have to prepare for the berthing.</p> <p>10 Q. All right. Let me just ask you this. Since your vision</p> <p>11 was affected and presumably the others' also, I take it</p> <p>12 you complained about this, did you, and said it was</p> <p>13 unsafe?</p> <p>14 A. No, I didn't make any such complaint.</p> <p>15 Q. Why not?</p> <p>16 A. Because after it had taken such a long time, nothing</p> <p>17 much had happened, and then I didn't have the guts, you</p> <p>18 know, to lodge complaints.</p> <p>19 Q. But even though on this particular night, when there</p> <p>20 might be all kinds of vessels around which you weren't</p> <p>21 used to, you still didn't think that was serious, it was</p> <p>22 dangerous?</p> <p>23 A. There weren't too many vessels or crafts around Yung</p> <p>24 Shue Wan.</p> <p>25 Q. How do you know? You couldn't see properly because of</p>
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<p>1 A. Yes, correct.</p> <p>2 Q. And you've told us that as you were approaching Yung</p> <p>3 Shue Wan, the fog light became apparent?</p> <p>4 A. Yes. When we were approaching the Shek Kok Tsui beacon.</p> <p>5 A little before it. And then we could see the fog</p> <p>6 light.</p> <p>7 Q. Yes. Did this hamper your vision?</p> <p>8 A. No.</p> <p>9 Q. I take it you're used to it?</p> <p>10 A. No, I wouldn't say that.</p> <p>11 Q. It's just not a problem?</p> <p>12 A. No, absolutely not. Yes, it did affect us.</p> <p>13 Q. Sorry, it did affect you or it didn't affect you?</p> <p>14 A. It did affect us.</p> <p>15 Q. How did it affect you?</p> <p>16 A. It blinded our vision.</p> <p>17 Q. Just about the time where you get to the spot where it</p> <p>18 blinds your vision, the three look-outs all go and do</p> <p>19 something else; is that right?</p> <p>20 A. Yes.</p> <p>21 Q. As an experienced sailor, does this make any sense to</p> <p>22 you whatsoever, that you keep a look-out when it's easy</p> <p>23 to see, and as soon as it becomes difficult because of</p> <p>24 the glare, the three look-outs disappear?</p> <p>25 A. Because the ship was approaching the pier, and then we</p>	<p>1 the glare.</p> <p>2 A. When I was talking about many vessels, it was near Green</p> <p>3 Island.</p> <p>4 MR GROSSMAN: Mr Chairman, I think I've exhausted that.</p> <p>5 Would you find this a convenient time to adjourn?</p> <p>6 THE CHAIRMAN: Yes, very well.</p> <p>7 Mr Wong, we're going to adjourn now. I'm going to</p> <p>8 ask you to return tomorrow to continue your evidence,</p> <p>9 and to do so at 10 o'clock. Do you understand?</p> <p>10 A. Yes, I understand.</p> <p>11 THE CHAIRMAN: You can leave the witness box now, if you</p> <p>12 like.</p> <p>13 Mr Shieh, I think we ought to maintain contact with</p> <p>14 Mr Lai Sai-ming and ask him to attend the hearing</p> <p>15 tomorrow so that he can acquaint us with what his</p> <p>16 situation is.</p> <p>17 MR SHIEH: Developments about legal representation.</p> <p>18 THE CHAIRMAN: Yes, what steps he's taking and so on.</p> <p>19 MR SHIEH: Yes.</p> <p>20 THE CHAIRMAN: Because we're at a stage, of course, where</p> <p>21 his cross-examination or questioning is being conducted</p> <p>22 on his part now for several months, and we're in the</p> <p>23 middle of his giving his account, which puts him in</p> <p>24 a different situation, perhaps. What lies ahead is the</p> <p>25 concluding speech, which is another matter. But</p>

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<p>1 continuing to give his evidence is separate. So we wish 2 to hear from him tomorrow as to where he is. 3 MR SHIEH: Yes. There is also a question as to the need for 4 the question of representation of the coxswain to be 5 sorted out, because after Mr Grossman, and perhaps 6 Mr Sussex and Ms Lok, it is conceivable that Mr Lai may 7 well have questions asked of this particular crew member 8 or the engineer or the other crew. 9 THE CHAIRMAN: Yes, that is the fact. And it may be, 10 therefore, that it would be better that he's in the 11 hearing himself tomorrow, so that he at least hears the 12 witnesses giving their evidence in Cantonese, and the 13 interpretation of the questions. 14 MR SHIEH: Yes. As to whether he asks himself or whether he 15 waits until any legal team comes on, we may have to 16 explore that as and when the matter -- 17 THE CHAIRMAN: That's another issue. But I think he ought 18 to be back here tomorrow. 19 MR SHIEH: Yes. No doubt the Commission's solicitors will 20 be in touch with him, because at the moment I think -- 21 THE CHAIRMAN: Yes, I think it's appropriate that the 22 Commission contacts him. 23 MR SHIEH: Yes, because I think Holman and Mr Sussex and 24 Mr Zimmern are no longer representing him, so I think Lo 25 &amp; Lo will do it.</p>	<p style="text-align: center;">I N D E X</p> <p>1 2 MR LAI SAI-MING (on former affirmation in Punti) .....1 3 4 Ruling .....6 5 (The witness stood down) .....18 6 MR WONG TAI-YAU (affirmed in Punti) .....24 7 Examination by MR SHIEH .....24 8 Examination by MR GROSSMAN .....101 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
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<p>1 THE CHAIRMAN: Yes. We require him to be here tomorrow. 2 MR SHIEH: Very well. 3 THE CHAIRMAN: Thank you. 4 10 o'clock. 5 (5.33 pm) 6 (The hearing adjourned until 10 am on the following day) 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	