Easier to settle disputes amicably outside court setting, says mediator

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PROFESSOR LAWRENCE Boo feels heartache when fights unfold in public.

It is with the same heavy heart that he shares his own experience with the ongoing Aliaun Ho-Sew Kuan wrangle, where rival factions voting for control of the clan association have accused each other of improperity in the courts and in the press.

For Prof Boo, a leading mediator and arbitrator in Singapore, these incidents serve as a call for a calm, structured dialogue in a private setting.

"I think they need to go for mediation," he says of the rival factions.

"When they fight, the association suffers. Even if one party wins, the association is going to be seen as one whose members always go to court."

The clan members, are after all, "ku bi nge", a Teochew catchphrase which loosely means "our kind".

"They must seek a solution that is good for the association. They have a common interest in the well-being of this association, which I think at the moment they are failing to see."

Prof Boo is less prescriptive in his official role as one of the principal mediators with the Singapore Mediation Centre. The 54-year-old lawyer juggles that role with his other roles as a professorial arbitrator at The Arbitration Chambers, an adjunct professor at the National University of Singapore and a law reform consultant to the Attorney-General’s Chambers.

The way he sees it, mediation is less about trying to win the battle but more about warring parties not about facing a situation in which two sides ultimately end up, ways to bring about a settlement that is less costly and cheaper for all concerned.

"The only thing I do in mediation is to present the parties to continue talk- ing, thinking of options, and2 continuing their own case. And continues considering the views of the other side."

Amicable mediation solutions highlighted by The Straits Times were cited by Chief Justice Chan Sek Keong in a speech he gave at the opening of the legal year last Saturday.

Prof Boo feels that it is easier for disputing parties to come up with more creative solutions during mediation and away from the spotlight of the court setting.

He often the case of a Singapore company locked in a dispute for a few years and with an an Australian firm over the quality of a certain products the former shipped over.

The Australian company rejected the delivery but the Singapore company said it supplied goods with the correct specifications. It turned out that the quality of the goods had deteriorated when exposed to heat during storage.

If the case had gone through the courts, Prof Boo said, the lesson for the Australian company could have hoped for was to work on issues. Through mediation, the two parties arrived at a happy compromise.

A teacher and an honorary judge too

PROFESSOR LAWRENCE Boo, 54, is a resident at The Arbitration Chambers, a firm which provides arbitration services.

Formally deputy chairman and secretary-general of the Singapore International Arbitration Centre, he has arbitrated 150 cases and mediated in more than 60 disputes.

He is an adjunct professor at the National University of Singapore where he leads the teaching of international commercial arbitration.

Exploring why he finds mediation more satisfying than arbitration, Prof Boo says mediation can create amicable outcomes while in arbitration there are winners and losers.

Q&A: Wary of divorce cases

■ Is there anything you will not mediate? I seldom say no to mediation, but I would be very cautious about mediating divorcing couples. I’m thankful I’ve not been approached to do it. I’m not sure if I can handle the emotions involved and if my pro-family, pro-life principles can help a divorcing couple to come to an agreement.

■ You mean you could end up siding them? I could well do it but I am a little bit apprehensive... that I am a district judge in the family courts, where there is a Family Court that looks into such cases. But I’m not sure if I could handle the emotions.

■ Would you rejoin such cases? I would not rejoin it if both parties really want me to rejoin it. If the dates don’t suit me. My attitude to mediation is I never said no. I am a bit of a stick in the mud in that the courts, and I cannot accept the appointment.

■ There are an “Asian way” of resolving disputes? There could well be. The development of mediation has, in a technical sense, been led by the Americans. The US has developed technical skill sets - they have evaluative mediation and facilitative mediation.

In Asia, we tend to use more senior people, older people, people with grey hair and black robes. They become convinced on an authority figure, and would likely to influence the parties in the disputes. I think the Asian style of mediation comes from the English style of mediation. In the Singapore Mediation Centre we tend to be very facilitative. That means we don’t tell the parties what to do. But I think in the Asian context, we could well be moving towards a certain degree of evaluation. In other words, the mediator might say to the parties: “Tell me your case may not be so strong, maybe you should give up something.”

The evaluative element here may be slightly higher. In Asia, we tend to look up to authority, we pay more respect to our elders, in that sense I think in the regional
generation they tend to see evaluations.

Here, we say that everybody is equal, but sometimes, you pay more respect to those with authority, who are older people. In that sense, there is a challenge or challenge less what they say. In the West they will say: ‘This is what you are. You are not a president, but you will not speak their mind and do not say’ so you tend to be more facilitative.

Prof Boo is confident enough to admit he finds mediation more satisfying than arbitration, though both are equally valuable as alternative methods to resolve disputes.

"When I sit as an arbitrator, I adjudicate. When I sit as a mediator, my role is purely helping the parties understand that their case can be made better. It will be a better realisation of what would be the worst scenario or the best-case scenario.”

Arbitration cases often result in a clear “win-win” situation where both parties can create amicable outcomes. In mediation, however, it is still a win-win situation... Maybe you win less but, it’s still a win-win situation.

"In mediation, both parties are very happy with you, which is very nice. In arbitration, I always lose one party, as one party always loses... In mediation, I always feel like a friend, in arbitration, I just win one.

In a nutshell, he says with a laugh, his earnings as a mediator are not enough to pay his bills, so he relies on his main job as an arbitrator to survive.

"If you have someone who likes this, I would say I need arbitration, but I love mediation, on balance I like it."