

**FROM DISPUTE  
RESOLUTION TO  
DISPUTE  
RECONCILIATION-**

**THE BIRTH OF  
PEACE  
JURISPRUDENCE  
IN THE CARIBBEAN**

Presented by Justice  
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# Hello.....from the Caribbean

*"I would come to this land of mine and I would say to it:  
"Embrace me without fear... And if all I can do is speak,  
it is for you I shall speak."*

*And again I would say:*

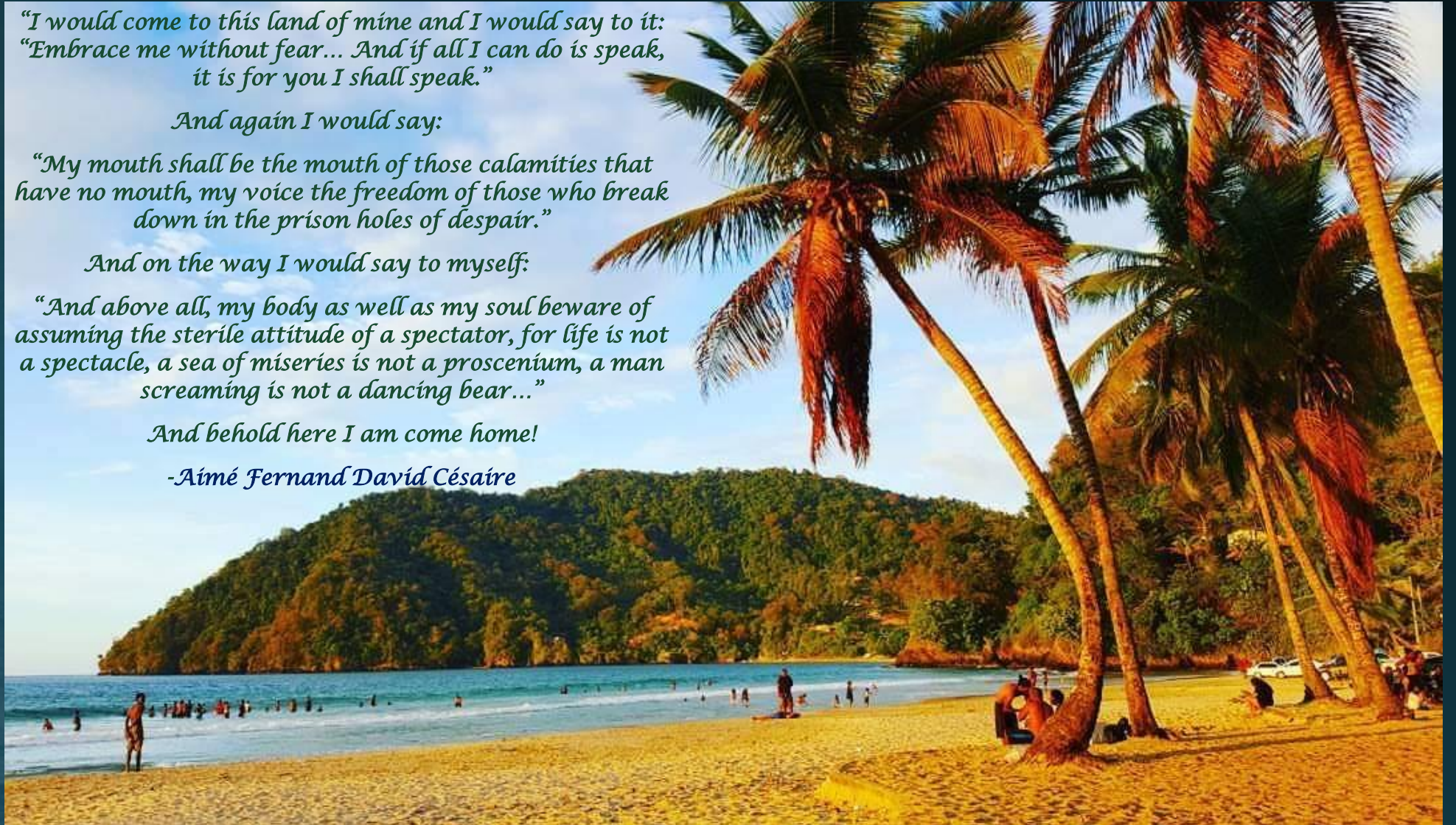
*"My mouth shall be the mouth of those calamities that  
have no mouth, my voice the freedom of those who break  
down in the prison holes of despair."*

*And on the way I would say to myself:*

*"And above all, my body as well as my soul beware of  
assuming the sterile attitude of a spectator, for life is not  
a spectacle, a sea of miseries is not a proscenium, a man  
screaming is not a dancing bear..."*

*And behold here I am come home!*

*-Aimé Fernand David Césaire*





# PEACE JURISPRUDENCE





# EXPLORING THE ROLE OF THE CPR JUDGE

- “Court matters involve individuals with lives that **extend beyond the parameters** of the facts and issues placed before the Court....”
- “The role of the CPR judge is therefore of critical importance because how **Judges are perceived and experienced** impacts not only on actual matters before the courts but also on the degree of **public trust and confidence** in the general administration of justice....”
- “Public confidence depends on judicial officers being sensitive to the **social context** in which we perform our duties and it requires us to perform them in a way that is **relevant** to the communities which we serve..”



# PEACE JURISPRUDENCE

- **Peace Jurisprudence:** The idea of judicial humanism leading positive social change. The process by which the law places the concept of peace as an outcome and gives priority to reconciliation beyond simply legal resolution. Restoration and harmonization of parties' goals and interests plays a dominant feature in judicial outcomes. It recognises judicial encouragement of self-determination and collective autonomy builds greater trust in peaceful results and the "democratisation" of the system of justice.
- **Four strands of Peace Jurisprudence:**
  - ❖ Mediation practice;
  - ❖ Therapeutic jurisprudence;
  - ❖ Restorative justice;
  - ❖ Culture and history.



# Mediation Practice

- **The Three Cs-** Compassion, Collaboration, Consensus
- **Key elements:** Self Determination, Voluntariness, Confidentiality, Informed Consent, Creativity and Permanency in solution making
- **See:**

☐ **Jennifer Moraldo v Anthony Sandiford** CV2016-01946  
([http://webopac.ttlawcourts.org/LibraryJud/Judgments/HC/kokaram/2016/cv\\_16\\_01946DD21jun2018.pdf](http://webopac.ttlawcourts.org/LibraryJud/Judgments/HC/kokaram/2016/cv_16_01946DD21jun2018.pdf))

☐ **Jennifer Moraldo v Kenneth O'Brien** CV2017-00857  
([http://webopac.ttlawcourts.org/LibraryJud/Judgments/HC/kokaram/2017/cv\\_17\\_00857DD21jun2018.pdf](http://webopac.ttlawcourts.org/LibraryJud/Judgments/HC/kokaram/2017/cv_17_00857DD21jun2018.pdf))

☐ **Roger Carrington v The University of Trinidad and Tobago** CV016-03482  
([http://webopac.ttlawcourts.org/LibraryJud/Judgments/HC/kokaram/2016/cv\\_16\\_03482DD06dec2017.pdf](http://webopac.ttlawcourts.org/LibraryJud/Judgments/HC/kokaram/2016/cv_16_03482DD06dec2017.pdf))

- **These are transferable skills**



# The Promotion of Mediation as a Means of Achieving Peace

- The Work of the Mediation Board of Trinidad and Tobago 2010 to 2018
- Annual Mediation Symposia 2010 to 2017
- Mediation caravans
- Mediation Pledge
- Restorative Justice roundtables
- Draft Declaration of the Peace Summit 2015



# Therapeutic Jurisprudence

- “Solution-focused judging applies therapeutic jurisprudence, an approach to the law that, amongst other things, sees law and legal processes as having the potential to promote healing”- **“Realising the Potential of Judging”- Michael King**
- **Pan Trinbago Inc v The National Carnival Commission of Trinidad and Tobago CV2017-00468** “I recognise this ultimately as a relational dispute between two bodies that must cooperate with one another and I have also approached this case with a therapeutic key mindful to bring about a satisfactory resolution to their dispute.”





# Restorative Justice

- Viewing crime as an injury and justice as a process for healing to take place.
- Establishing a prison reform fund instead of awarding exemplary damages (**Jason Raymond v The Attorney General of Trinidad and Tobago** CV2016-00029)





# History and Culture

- East Indian and African traditions of peaceful dispute resolution systems.
- The Panchayat and the Elder System





# THE CARIBBEAN MEDIATION MOVEMENT







## Jamaica

- ❖ Court Annexed Mediation programme under Part 74 of the CPR
- ❖ Dispute Resolution Foundation
- ❖ Arbitration Act 2017
- ❖ In 2018 DRF partnering with Citizen Security and Justice Programme (CSJP) III in implementing a community mediation project



## Guyana

- ❖ Mediation has been established since 2003 within the compound of the High Court of the Supreme Court of Judicature at Georgetown.
- ❖ Civil Proceeding Rules 2016 provides for Court ordered mediation under Part 26
- ❖ Alternative Dispute Resolution Chap 7:05





**Barbados**

- ❖ ADR Association of Barbados Inc. (2004)
- ❖ The Arbitration and Mediation Court of the Caribbean Inc (AMCC) is based here
- ❖ The Supreme Court Civil Procedure Rules 2008 provides for mediation.



**OECS**

- ❖ Practice Direction No. 1 of 2003 provides for Court Connected Mediation
- ❖ Part 25.1(h) of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000





## **BELIZE**

- ❖ **Mediation Rules of 2013 provides for Court Connected Mediation (Part 73)**
- ❖ **National Court-Connected Mediation Committee**
- ❖ **Obtained guidance from the indigenous Mayans to explain how to settle disputes**



## **Trinidad and Tobago**

- ❖ **Community Mediation Model since 1998**
- ❖ **CPR 1998 (as amended) recognises ADR**
- ❖ **Mediation Act 2004**
- ❖ **Community Mediation offered at several community mediation centres**
- ❖ **Approx. 580 certified mediators**



# JUDICIAL MEDIATION IN THE CARIBBEAN





# THE PEACE MAKING JUDGE

- VOICE
- RESPECTFUL TREATMENT
- NEUTRALITY
- TRUSTWORTHY AUTHORITIES
- ACCOUNTABILITY
- UNDERSTANDING
- ACCESS TO INFORMATION
- AVAILABILITY OF AMENITIES
- INCLUSIVITY







# OBJECTIVES AND CHALLENGES OF PEACE JURISPRUDENCE

## OBJECTIVES

- Find practical solutions
- Enter Consent Orders
- Minimize appeals
- Promote reconciliation either with the other disputants or with oneself

## CHALLENGES

- Time management
- Attorney buy in
- Bias
- Judicial Overreach



# Key features of Peace Jurisprudence in Civil Case Management

- The case is not a number
- Creating the environment for peace
- Creating empathy
- Building hope
- Future oriented
- Acknowledging history
- Family, Culture, Tradition and Religion





# Key features of Peace Jurisprudence in Civil Case Management continued....

- **Co-opting help**
- **Recognising the problem and explanations**
- **Keeping control and agenda setting**
- **Revolving door litigation and the search for permanent solutions**
- **Buy in and good faith**
- **National Development and Community Building**

# A TEMPLATE

## LEGITIMATE OBJECTIVES OF THE CMC JUDGE

- Information exchange: Disclosure
- Agreed facts/Agreed issues
- Agreement on Quantum if applicable
- Expert evidence (if necessary)
- Procedural Applications/collaborate
- Costs
- Timelines for resolution
  - a) ADR-Med/JSC
  - b) Judicial Determination

## PEACE JURISPRUDENCE APPROACH OF THE CMC JUDGE

- Main concerns and needs of clients
- Possible outcomes
- Risk assessment
- Reflection legal outcomes vs Concerns
- Collaborative mechanisms to improve respective client(s) futures



# Practical Strategies of Peace Jurisprudence

- ❖ **Pre- Judgment resolution hearings:** Jai Mahabir et al v Patrick Edwards et al CV2016-02033
- ❖ **Post Judgment discussions:** Mootilal Ramhit and Sons Contracting Limited v Education Facilities Company Limited and The Attorney General of Trinidad and Tobago CV2017-02465, Oswald Alleyne and 152 others v The Attorney General of Trinidad and Tobago Claim No. CV2018-0044 and Asma Ali v Mustapha Ali CV2016-03409
- ❖ **Lit med lit models:** Cai Trading LLC v Kiowa Rice Limited and Public Grains Investment Limited CV2017-02150 CV2017-02151
- ❖ **Creative problem solving in judicial outcomes:** Jason Raymond v The Attorney General of Trinidad and Tobago CV2016-00029 Geeta Ragoonath v Ancel Roget CV2015-01184 Karen Tesheira v Gulf View Medical Centre Limited CV2009-02051

# The Evolving Trial

- Seating
- Evidential rules?
- Cross examination
- Expert evidence
- Drafting judgments-  
Letters to litigants





# Adapting to Our New Environment

