

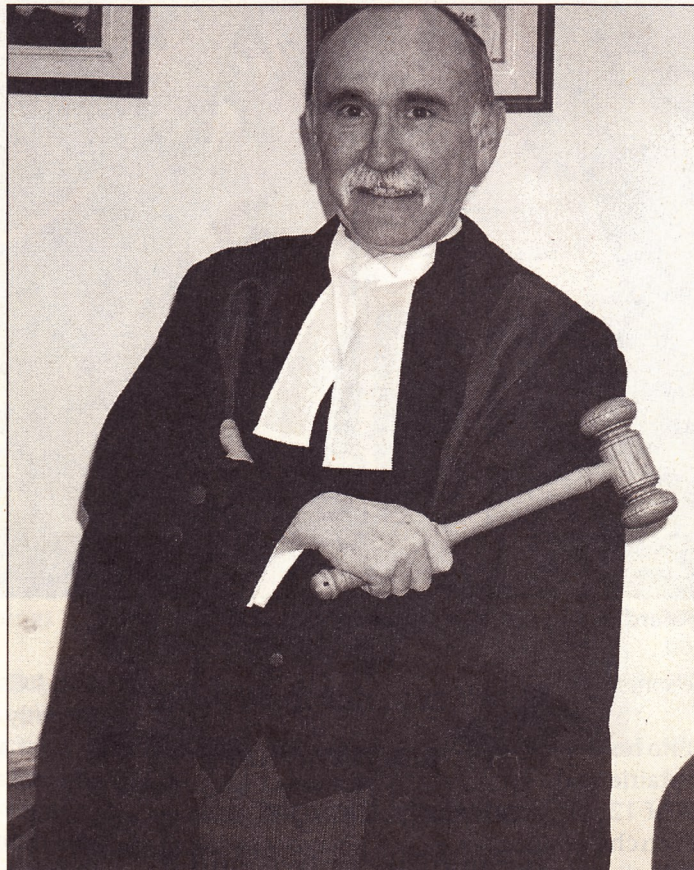
# Judge of the people

By Carmen Pauls

To most folks on his northern Saskatchewan circuit, Claude Fafard is simply "the judge." Even in the tiniest, most remote communities, where Fafard discards what he calls his "Batman suit" in favor of a simple suit and tie, he is quickly recognized by the local residents.

Looking down past the side tufts of greying hair, the keen eyes and full moustache, the white collar and black robes covering his slight, compact body, all the way down to his feet, they might see something only a few know.

"He wants to be a cowboy," said Robin Ritter, the chief Crown prosecutor and Fafard's neighbor in La Ronge. "The cowboy boots worn under the judicial robes are a giveaway; the stories he tells on the plane about his horses—how they're doing, which ones are about to give birth—I think he wants to stay in touch with his roots and his roots are on the farm."



Claude Fafard, one of the North's most colorful judges, was the first judge to try sentencing circles in Saskatchewan.

Photo by Carmen Pauls

right, things will work out okay, whereas a lot of times the people I see in court are all messed up and I can't change that."

"The cowboy was the embodiment of chivalry, good values and self-reliance," he said. "I like to see myself as being able to cope. If I take on a job I like to see myself carrying it through."

"Carrying it through" is what Fafard's career has been about, from sentencing a young artist to do a painting for the Crown instead of paying a fine to hauling in the regional director for Northern Corrections to find out how he could ensure that appropriate jail time would be served. He also conducted the first-ever sentencing circle in Saskatchewan.

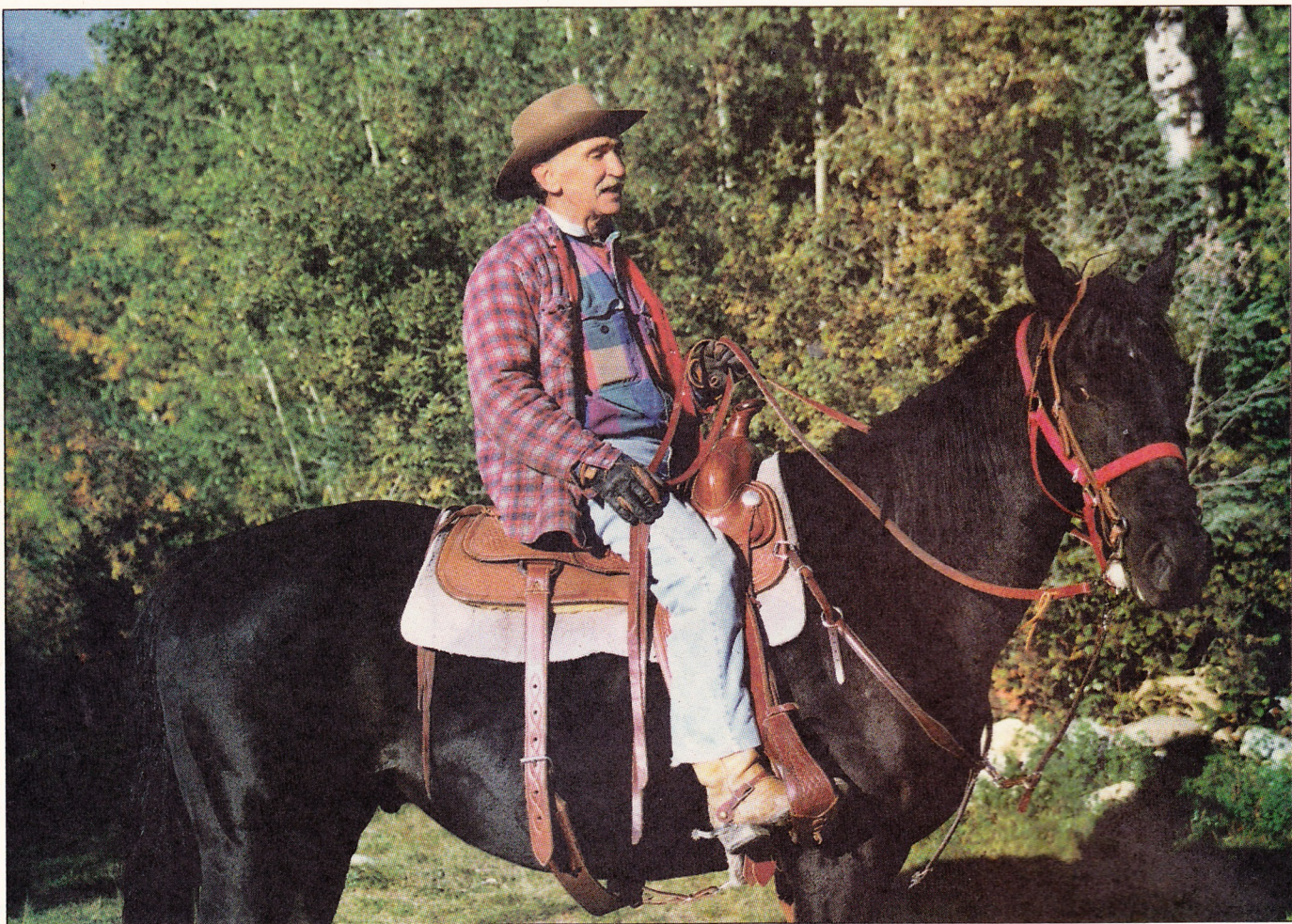
"I'd like my epitaph to read, 'He was tough, but he was fair,'" Fafard said. "I hope that people in the North, that I've helped them to come to the conclusion that they are entitled to respect from the justice system, that they have intrinsic value, their language, their cul-

After nearly 25 years in La Ronge, Fafard and his compassionate, thoughtful, and sometimes outlandish judicial style have become staples of the northern justice system. And while his decision to raise horses in the middle of forest and muskeg might at first have seemed as odd to Fafard's neighbors as his courtroom manner, his "little bit of home" has become equally accepted.

"I love horses, and we always had horses when I grew up—working horses, riding horses. And I was always this, my alter-ego was a cowboy.

"There's something therapeutic about it," he said. "Because if you do it





Hilary Johnstone

"My alter ego was a cowboy." Fafard enjoys ranch life at La Ronge, Sask.

ture. They don't have to become something else to deserve respect."

The values that Fafard brings into his courtroom are rooted deep in prairie soil. He was born in 1944, one of 12 children raised in a poor French Catholic farm family in the small village of St. Marthe, Sask.

Fafard's nine surviving siblings all still live on the Prairies, including his older brother Joe Fafard, an internationally-renowned artist.

After high school, Fafard spent two years at the University of Saskatchewan before going to work in a potash mine. He married Elaine, the young Irish girl who had always invited him in for a cup of tea when they were teens in St. Marthe. They raised a family, including Jean-Claude (J.C.), Cosette, Leo, their adopted daughter Melanie, and now her son Basil.

After four years of mine work, Fafard was bored. He drove down to Saskatoon one night after work, wrote the Law School Admission Test (LSAT), and then

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drove back in time for his next shift. He was accepted.

Fafard spent several years practising law in Melfort after graduation. In 1975, he heard about an opening for a provincial court judge on the northern circuit, and decided to inquire. "He walked into [then-Justice Minister] Roy Romanow's office and said, 'I'm here about the job,'" explains Fafard's eldest

son, J.C. "And Romanow said, 'You're the only one who's asked for the job.'"

So at age 30, he took on the judge's role in La Ronge.

That was when Ross Moxley first met him. Moxley, now a small claims court judge in Regina, was already on the northern judicial circuit when Fafard joined the staff, and Moxley admits to being a bit startled when they first met.

"A fun-loving, carefree sort of a fellow, a little unexpected for a judge," Moxley said of his first impression of his new colleague. "He looked a little like a hippie. He wore his hair long, in the style of people his age.

"In many ways Claude is still fun-loving, enthusiastic. He's the life of the party."

Fafard is also a sculptor, and his portrayals of such northerners as fur trader Alex Robertson and Cree elder Mary Ross decorate his sprawling country home. Fafard has also performed with La Ronge's amateur theatre group, Peanut Productions, often enlivening the show



with his sense of comic timing.

It is in the courtroom where Fafard's creativity flourishes. As Moxley discovered, behind the long hair, the yacht caps, and the jokes was a finely-tuned and passionate legal mind.

Those in court sometimes witness this mind moving at full throttle — what Fafard calls his "cris du coeur."

"The transcript looked like this judgment came carefully thought out, beautifully crafted, and it really came off the top of his head, out of his heart," said Moxley of one case.

Occasionally, his innovations get Fafard into trouble with the legal community, but this has not stopped him from experimenting and pushing the limits of what the legal system can do for people.

"I don't think Claude really worries about embarrassment. I think he loved the attention he got when he would do something unique," Moxley said.

Fafard's decisions are not made lightly, he said. "Claude has been frustrated over the job he's had to do here. The demands are high, the resources are limited, and some of the things he's tried are just out of pure desperation when things aren't working."

Sentencing circles are one example: "There were a lot of people who scoffed at that, but I think it was worth a try," Fafard said. "I'm quite willing to lock up every sociopath, because they're harmful to people. But some people, they can be rehabilitated."

The sentencing circle is a traditional native form of justice in which victims and offenders meet to share their stories. Together with family and community members and a judge, they determine an appropriate way for the offender to make restitution and be rehabilitated into the community.

The approach was first used in the modern Canadian justice system by Barry Stuart, a Yukon territorial judge, in 1992. Fafard heard about Stuart's attempt and told Moxley he wanted to try it out. The first-ever Saskatchewan sentencing circle was conducted that July, under Fafard's leadership, in Sandy

Bay.

"Claude is courageous," said Moxley. "Other judges have gone to these conferences and come back with ideas, but Claude will actually try them out."

Fafard, however, has a more modest explanation: "I didn't think we had anything to lose. The way we were doing things, we weren't putting an end to violence," he said. "We know how to do this [jailing criminals]. Why not experiment, to see if something else works better?"



Carmen Pauls

**A Claude Fafard sculpture of Cree elder Mary Ross, grandmother or great-grandmother to many of the people who live on Bigstone Reserve. She died a few years ago (aged 102), but she used to come into Fafard's courtroom regularly when she heard that a relative of hers was in court, and give the accused a good talking-to. Fafard would always let her have her say. "I didn't want to be seen as telling the grandmother of La Ronge to be quiet," he explained.**

Sentencing circles in Saskatchewan have faced problems, such as a lack of community education and fear from native political leaders. Problems have also arisen when judges have used sentencing circles inappropriately, as with the Billy Taylor case. Taylor, who had sexually assaulted an ex-girlfriend, was banished to a deserted island. Taylor's ex-girlfriend refused to participate in the victim-offender healing process, an essential element of sentencing circles.

While Fafard was not involved with the Taylor case, he and the sentencing circle approach have been negatively affected by the backlash it caused.

Ritter said Fafard's innovation has improved lives and changed attitudes towards alternative justice. "It was quite remarkable to see something that at first seemed almost foreign become widely used and accepted in the province," Ritter said.

As a prosecutor, Ritter had doubts about this radical shift in legal practice. Then he saw it work in a case involving a son who had assaulted his father. After hearing family and neighbors talk about the history of this troubled relationship, Ritter witnessed a reconciliation between father and son.

"They walked toward each other to shake each other's hands, and they suddenly grabbed each other and started hugging and crying," he recalled. "When you see something like that you know that justice has been done."

"The courtroom in the traditional sense is as clinical as an operating room, but that's not what Claude's courtroom is like. I think he likes the human drama," Ritter added. "Sentencing circles with Claude usually ended up with a box of Kleenex being passed around because everybody was crying."

A judge who takes such an innovative step often puts his personal credibility as a judge on the line. That takes great courage, said Ritter.

Judge Fafard is not afraid to try new things and cares about people, said J.C. Fafard. "He was interested in their lives. He wasn't just here to put in a term."