

Norman Dale's Letter	Fact Check
<p>One paraphrase of <u>British essayist George Santayana's famous saying is that those who are ignorant of history are doomed to recommit its mistakes.</u> Mrs. Serup's recent letter to The Citizen ("Who Owns B.C.?", May 19) illustrates this well. Her most significant error is one of omission in that she fails to make any note of history at all. <u>She accepts as a given that the Crown currently owns 95 per cent of the province's lands</u> when that is precisely the issue that has been in dispute since well before there even was something called British Columbia.</p>	<p><b>Fact:</b> George Santayana is a Spanish born American philosopher <u>not</u> British.</p> <p><b>Fact:</b> The real Santayana quote is – “Those who cannot remember the past are condemned to repeat it.” (<i>The Life of Reason</i>, Volume I, 1905)</p> <p><b>Fact:</b> About 95 percent of the land is Crown land, held by the Government of British Columbia in trust for the people of British Columbia.</p>
<p>The "land question" and, not one but different competing "claims" of ownership, date back to a peculiar occurrence in the 19th century when Europeans arriving here (unlike elsewhere in North America) <u>chose to ignore not just indigenous title and law but the rules from their own home countries about taking over other people's property.</u> At that time and to this day, <u>British law allowed for only three circumstances for this to happen:</u> first, in the occupation of empty land (terra nullius) -- patently not the case in western North America; second, military conquest, which did not happen here either; and third, by cession of land through explicitly treaty-making, an activity restricted in what in now B.C. to several pockets of Vancouver Island and, later, the northeast corner (Treaty 8). <u>So from the get-go, the presumption of ownership by colonists and their descendants has been ill-founded under their very own laws.</u></p>	<p><b>Fact:</b> Dale's argument is with Governor Douglas, British Columbia's first governor who is generally recognized to be the father of British Columbia.</p> <p>The British Government has <u>never</u> at any time held that Governor Douglas acted illegally <u>nor</u> has any British court ever held that he acted illegally.</p> <p>It was always open to the British Government to summarily remove Governor Douglas and overturn his decisions. They did <u>not</u>, they <u>awarded him a knighthood.</u></p> <p>On Douglas Day in 2007 the B.C. Government declared that “James Douglas was a visionary, a sensible leader and a humanitarian. His reputation for fairness made him a natural choice to be the first governor of the colony.”</p> <p>Dale <u>cannot</u> rewrite or revise history merely because he might wish it to be otherwise.</p> <p>Dale implies that property owners in British Columbia hold their property <u>illegally.</u> The Supreme Court of Canada routinely <u>rejects</u> such arguments.</p>
<p><u>As to Mrs. Serup's interpretations and assertions about what the courts have said: again, she needs to realize that what Campbell now proposes through the proposed Recognition and Reconciliation Act is not in conflict with the thrust of landmark judicial rulings, but rather a reflection of these.</u></p>	<p><b>Fact:</b> Campbell's proposed Recognition and Reconciliation Act would recognize aboriginal title over all Crown land and some suggest over privately held lands.</p> <p>The Supreme Court of Canada has consistently <u>refused</u> to accept claims of aboriginal title.</p> <p>In its landmark 2005 decision in <i>Marshall/Bernard</i> the Court <u>rejected</u> the kind of aboriginal title now espoused by the Campbell government that</p>

	<p>would see virtually all land in the province come under the control of new and powerful aboriginal governments merely because they are aboriginal.</p> <p>The Supreme Court <u>rejected</u> the conferring of aboriginal title in the absence of clear evidence of regular and exclusive pre-sovereignty occupation.</p> <p>The Supreme Court of Canada explained in practical terms the <u>evidence</u> necessary to establish aboriginal title.</p> <p><u>The Court made clear that mere seasonal or occasional visits to an area was not sufficient to establish aboriginal title, noting that while such practices might give rise to a more limited right, such as an aboriginal right to hunt, they certainly did not give rise to a right to aboriginal title to land.</u></p> <p>For that to occur there must exist a clear intent and an ability to exclude all others from the area.</p> <p>The free movement or welcoming of fur traders, explorers, prospectors, miners, missionaries, Hudson Bay Company personnel and government officials would work to undermine claims of exclusive control and would make it virtually impossible to establish aboriginal title in British Columbia except for a few village sites.</p>
<p>Yes, when forced to respond because of historic provincial government denial of aboriginal title, courts have established rules to test for aboriginal title. <u>But the learned justices have almost invariably summed up their decisions with recognition of the legitimacy of the legal concept of aboriginal title followed by pleas to the political system to solve the problem outside the courtroom. This is precisely what the Campbell government is now doing. Far from conflicting with provincial and federal supreme courts, the premier is falling in line with their repeated directions.</u></p>	<p><b>Fact:</b> The Supreme Court of Canada does <u>not</u> invariably conclude their decisions with a request for the government to negotiate.</p> <p>When the Supreme Court in <i>Delgamuukw</i> <u>refused</u> to accede to the claim of aboriginal title, it ordered a new trial and in ordering a new trial noted that it was though good faith negotiations “reinforced by the judgements of this Court” that reconciliation of aboriginal societies with the sovereignty of the Crown would be achieved.</p> <p>Unfortunately the Campbell government, in their rush to recognize aboriginal title, have chosen to <u>ignore</u> the Supreme Court rulings on aboriginal title <u>rather</u> than be guided by them.</p> <p>The <i>Marshall/Bernard</i> decision concluded with the following statement:</p> <p><i>“The question of aboriginal title and access to resources ...</i></p>

*is a complex issue that is of great importance to all the residents and communities of the provinces. The determination of these issues deserves careful consideration, and all interested parties should have the opportunity to participate in any litigation or negotiations.”*

That is hardly a judicial admonition to politicians to agree to every demand to recognize aboriginal title.