PUBLICATION: Prince George Citizen
DATE: 2009.05.23
EDITION: Final
SECTION: Opinion
PAGE: 6
BYLINE: Norman Dale

Land ownership is the question

One paraphrase of British essayist George Santayana's famous saying is that those who are ignorant of history are doomed to recommit its mistakes. 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. She accepts as a given that the Crown currently owns 95 per cent of the province's lands when that is precisely the issue that has been in dispute since well before there even was something called British Columbia.

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) chose to ignore not just indigenous title and law but the rules from their own home countries about taking over other people's property. At that time and to this day, British law allowed for only three circumstances for this to happen: 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). So from the get-go, the presumption of ownership by colonists and their descendants has been ill-founded under their very own laws.

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.

Yes, when forced to respond because of historic provincial government denial of aboriginal title, courts have established rules to test for aboriginal title. 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.

To suggest a return to bad old days of divisive "referenda," as Mrs. Serup now does, to repeat, betrays a wilful ignorance of the long, often tragic history when Euro-Canadians stubbornly denied the obvious prior land rights and ownership of First Nations.

Norman Dale

Prince George