



# The Trial of Tshuanahusset: Fair or Foul?

*This MysteryQuest investigates whether or not the Aboriginal man convicted in the 1868 murder case of William Robinson deserves a retrial. Students learn to question the claims offered in historical documents as they explore the relationships between First Nations people and settlers during the British Columbian gold rush era.*

*A critical thinking challenge to accompany*

***Great Unsolved Mysteries in Canadian History***

***Who Killed William Robinson?  
Race, Justice and Settling the Land***

**<http://www.mysteryquests.ca/quests/03/indexen.html>**

*Author: Dick Holland*

*Editors: Ruth Sandwell, Dick Holland*

*Series Editor: Roland Case*

*based on an approach developed by The Critical Thinking Consortium (TC<sup>2</sup>)*

**[www.tc2.ca](http://www.tc2.ca)**

## **Ages**

14-16

## **Courses**

Canadian history, civics

## **Key topics**

- interaction between First Nations people and settlers in British Columbia
- historical evidence

## Critical Challenges

- Do individual statements and evidence found in the historical documents provide reasons for considering a retrial of Tshuanahusset for the murder of William Robinson?
- Are there sufficient grounds to recommend a retrial?

## Broad Understanding

Students will learn that, when looking at significant events, it is important to take into account societal structures and ideas in addition to individual actions.

## Requisite Tools

### *Background knowledge*



- knowledge of the events and social context surrounding the murder of William Robinson
- basic knowledge about the settlement of colonial British Columbia and Salt Spring Island
- knowledge of the use of PowerPoint presentation software



### *Criteria for judgment*

- criteria for warranted inferences (e.g., supported by the evidence, no alternative explanations)
- criteria for a retrial (e.g., trial bias, new evidence, evidence tampering)



### *Critical thinking vocabulary*

- explanation
- inference
- evidence



### *Thinking strategies*



- data chart
- for and against chart

### *Habits of mind*

- questioning and posing problems

## Independent Study

This lesson can be used as a self-directed activity by having students individually or in pairs work their way through the guided instructions and support material found at <http://www.mysteryquests.ca/quests/03/indexen.html>.

## Whole Class Activities

On the following pages are suggested modifications of the self-guided procedures found on the MysteryQuest website for use with a class of students. For convenience, each support material and set of directions found on the website is reproduced next to the relevant suggestions for whole class instruction.

## Suggested Activities

### Introduce the murder of William Robinson

- Use *Introduction* to guide students to a preliminary understanding of the community and the crime.

#### INTRODUCTION

In 1867-1868, a tiny community on Salt Spring (now spelled as one word, "Saltspring") Island off the coast of British Columbia was the scene of three brutal and seemingly unconnected murders. The victims were members of the island's African-American community. These African-Americans had fled persecution in California in 1858, but the murders fractured the community and drove many back to the United States. Aboriginal people were widely blamed for the murders, but in only one of the murders was someone charged and convicted.

William Robinson was one of the victims. His body was discovered in his cabin, several days after he had been shot in the back. An Aboriginal man, Tshuanahusset, was arrested many months later, convicted, and hanged. Some people felt that the trial was not fair.

- Use *The Task* to explain the activities and challenge to students.

#### THE TASK

This MysteryQuest invites you to re-examine the conviction of Tshuanahusset (also called Tom the Indian) on behalf of a human rights group, the Association in Defence of the Wrongly Convicted. You are to evaluate the evidence and decide whether or not to recommend a retrial that might right a potential historical injustice. Such a retrial is justified if any of the following criteria are met:

- *Bias during the trial* — you find evidence that the judge or jury were biased against the prisoner on the basis of class, race, or gender.
- *Important new evidence* — you locate new evidence that would have significantly influenced the jury's verdict if it had been presented at the trial.
- *Tampered evidence* — you believe there is **proof beyond a reasonable doubt** that the physical evidence presented at the trial was tampered with or deliberately placed by others to mislead the authorities.

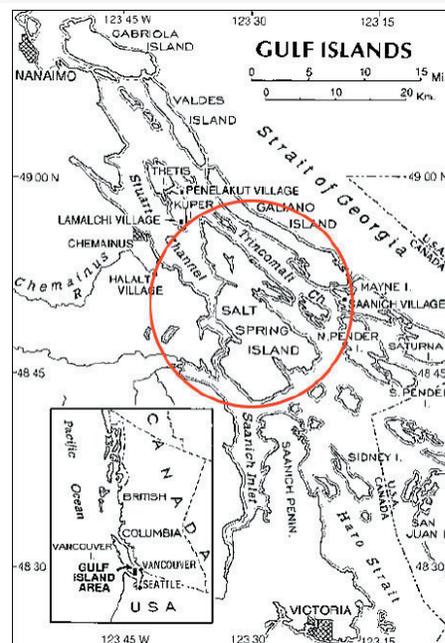
In preparing your recommendation, familiarize yourself with the historical context of the case and thoroughly examine documents from the time, looking for reasons for and against a retrial. Finally, you are to prepare a PowerPoint presentation with your recommendation and evidence to support your findings on the three criteria mentioned above.

- Using *Step 1: Learn the background to the case* as a guide, present *Salt Spring and the Gulf Islands, Historical Locations* and discuss it as a class to orient students to the geographic area where the murder occurred.

#### STEP 1: LEARN THE BACKGROUND TO THE CASE

Your first task is to learn more about the historical and immediate facts of the case by consulting other materials relevant to this MysteryQuest:

- read the briefing sheet *Relations Between First Nations People and Settlers* that describes the history of tensions on the island at the time of the murder;
- examine the map entitled *Salt Spring and the Gulf Islands* to identify the general location of the island;
- read about William Robinson's murder in the newspaper article, "The Salt Spring Murder" appearing in the *British Colonist*, March 24, 1868;
- and if time allows, familiarize yourself with the remainder of the home website, "Who Killed William Robinson". You may want to navigate around the site and sample each section.



- Use the information found in the newspaper article, “Salt Spring Murder”, *British Colonist*, March 24, 1868 as a guide to provide students with a summary of the details of the murder.

#### Salt Spring Murder

*The British Colonist*, March 24, 1868

Some further particulars of this outrage have come to hand, and prove it to have been one of the most cold blooded crimes we have yet heard of in the Colony. The murdered man, Robinson, is one of the colored settlers on the island, and a most inoffensive, harmless man. He resided in a rather lonely log house by himself, which, when Robinson was missed, was found locked and the key removed. Robinson was last seen at church on the preceding Sunday evening. A man who comes to assist him occasionally, and had some goods for him which had just been landed, after several prior applications at the house, peeped in on Saturday by removing some of the packing between the logs, it having no window. Seeing a man's boots he touched them with a stick, and perceiving no motion gave the alarm. Other settlers came, but it was not until Monday that the resident constable was apprised of it, and forced an entrance by removing a log near the door. The poor victim was found on his back upon the floor, with a box on which he was sitting between his knees, still grasping in his hand a knife with which he was in the act of conveying food to his mouth, and had so lain to all appearances probably a week. He had been shot in the back, the ball passing out at the chest, and so very close must have been the gun that wadding and all had penetrated the body, the clothes being much burned with the powder. The assassin was probably sitting at the man's own hearth. A good double barrel shot gun, some clothes and the man's account books were found to be missing. The last opinion is that the brother or other relatives of the Indian now awaiting his trial for the killing of an Indian woman, if not the murderer, out of revenge, had a large share in it. The whole affair is most mysterious, and it is just one of those cases where a reward offered by Government would probably lead to the arrest of the murderers. A feeling of great insecurity prevails among the settlers, who frequently have valuable cattle shot by unknown hands. Many of the colored settlers have their wives and families there, whom they hardly dare leave for a day alone.

### Provide the historical context

- Duplicate and distribute copies of *Relations Between First Nations People and Settlers* to students, who will work individually or in pairs to provide the initial context for their investigation.
- At this time, you may also find it helpful to familiarize students with the “Who Killed William Robinson” website, found at <http://www.canadianmysteries.ca/sites/robinson/home/indexen.html>. Whether as a class using an LCD projector, in partners or individually on personal computers, invite students to investigate at least one of each of the following:
  - a newspaper account;
  - a diary entry;
  - a letter.

#### MysteryQuest 3

#### Support Materials 1 (Briefing Sheet)

##### Relations Between First Nations People and Settlers

This trial is not simply a case of one man, Tshuanahusset (also called “Tom the Indian”) being charged with the murder of another, William Robinson. It raises a bigger issue of conflict between First Nations people and settlers in coastal British Columbia.

For centuries (1650-1850), First Nations peoples lived quite harmoniously with the fur traders who came into their territory from Montreal to obtain furs, and later fish and berries. The Canadian fur traders were not interested in taking up First Nations' lands, but only in making use of Native hunting and trapping skills to provide the furs for sale in European markets. European-Canadians were dependent on the First Nations for this trade.

With the gold rush of 1858 on the Fraser River in southwestern British Columbia, matters changed. First Nations peoples and settlers began a long struggle for land. Drawn by the hope of a gold strike, many white people moved into the area. When they found no gold, many decided to stay and take up land for farming. British Columbia was one of the few areas in Canada not to make treaties with the Native population when a new area was opened up, even though there was a legal obligation to do so. First Nations people have spent more than a hundred years fighting for the return of their lands, or at least for the legal sale of these lands to the non-Native peoples who took them.

During the early settlement years, First Nations people protested against the illegal possession of the lands in various ways. Some made formal representations to the government and even to Queen Victoria. Others made a habit of “stealing” from vegetable gardens of new farmers on what had been their lands. Still others refused to leave lands they believed they owned. In extreme cases, First Nations people inflicted violence on the newly arrived settlers.

Relations between First Nations people and settlers during the settlement era of British Columbia (1858-1901) were not entirely unfriendly. On Salt Spring Island, for example, one-quarter of all marriages were between a Native woman and a non-Native man. By 1881, almost half of the children on the island were of mixed parentage. First Nations women not only provided families for settlers, they also gave them local knowledge about how to live off the land and sea in a remarkably rich environment. Skilled in hunting and fishing and in the cultivation and preparation of local foods, they played a key role as settlers adapted to conditions on the Pacific Coast. They taught whites skills and helped them to adapt to a life without doctors, roads, or the store-bought produce many settlers had relied on in England, Scotland, Ireland, Wales, Europe, or the United States.

Non-Europeans also settled in the area of present-day Victoria. In 1857, the governor of the colony of Vancouver Island, Sir James Douglas, invited African-Americans to settle on rural lands near Victoria. Wishing for political reasons (and other reasons) to install a non-Native population in the region, he promised British citizenship to the African-Americans, including the right to vote and own land. The only condition was that they establish farms on cheap country land. Several hundred people accepted his offer, with the first hundred arriving in April 1858. Some of them rowed over to Salt Spring in July 1859 and became the foundation of the African-American community there, which had grown to about 65 people by the time William Robinson was murdered.

In these early years, Salt Spring Islanders prided themselves on the equal relations between African-Americans and the larger British population. The African-American population was among the most educated on the island, and many men became active in local politics. As the first non-Native arrivals, they were also able to settle on some of the best land. There is some evidence that the African-Americans did not enjoy complete equality: they congregated in one part of the island and, following the first two murders, many decided that life there was not safe and so moved off the island or away from the coast. Some historians have argued that they left because the conclusion of the American Civil War ended official slavery in the United States. Whatever the reasons, the African-American community became much smaller and poorer after the murders of the late 1860s.

## Organize the evidence

- Using *Step 2: Look for evidence of unfairness* as a guide, direct students to begin a thorough examination of the documents listed in *Evidence in the Case*. Organize students in teams of four to analyse the 15 newspaper reports. You may also want to encourage students to examine the testimonials found in the Attorney General's documents and the Judge's notes taken during the trial. If a set of computers is unavailable, go through the documents as a whole class using an LCD projector and a computer connected to the Internet or print several hard copies for students to share.

### STEP 2: LOOK FOR EVIDENCE OF UNFAIRNESS

Your next task is to work individually or with a partner to examine historical documents that will help you decide whether there is enough evidence to justify a retrial. The official court transcripts of the trial of Tshuanahusset for Robinson's murder have been lost. For the purpose of our investigation, you are to examine 14 short newspaper reports (dated from December 21, 1868, to July 26, 1869) about Robinson's murder and that of another person, Giles Curtis, that occurred soon after Robinson was killed. These documents are found in the *Evidence in the Case* section of this MysteryQuest.

Your analysis of each document involves four tasks:

- identify at least one statement in each article that relates to the guilt or innocence of the accused or of anyone else who might have had a motive to kill William Robinson or Giles Curtis;
  - find evidence (objects, reasons, or clues) in the article that might support or contradict this statement;
  - record any of your own questions or ideas that might challenge or support the believability of statements found in the newspaper articles;
  - and draw your own conclusions from the evidence about the justification for a retrial of Tshuanahusset on the following grounds:
1. Does it suggest the jury or the judge might have been biased against the accused?
  2. Does it suggest important evidence was not presented at the trial?
  3. Does it suggest evidence was changed or tampered with?

Use the chart *Examining the Evidence* to record your answers as you read each of the assigned documents. A sample answer has been provided in the chart to help you understand what each of these tasks requires.

### EVIDENCE IN THE CASE

#### Newspaper articles

- "The Salt Spring Murder", *British Colonist*, March 24, 1868  
"Particulars", *British Colonist*, December 21, 1868  
"Salt Spring Island Settlers Sign Memorial", *British Colonist*, December 25, 1868  
"The Last Murder on Salt Spring Island", *British Colonist*, January 4, 1869  
"The Salt Spring Island Murder", *British Colonist*, January 11, 1869  
"The Indian Nuisance at Salt Spring", *British Colonist*, March 2, 1869  
"The Indians Could Afford to Laugh at Any Force", *British Colonist*, March 13, 1869  
"The East-Coast Murders", *British Colonist*, April 10, 1869  
Editorial, *British Colonist*, April 13, 1869  
"Court of Assize Before Chief Justice Needham", *Daily British Colonist*, June 3, 1869  
W. Smithe, Letter to the Editor, *British Colonist*, June 5, 1869  
"The Salt Spring Island Murder", *British Colonist*, June 30, 1869  
"The Salt Spring Island Murder", *British Colonist*, July 3, 1869  
"Execution", *British Colonist*, July 24, 1869  
"Execution", *British Colonist*, July 26, 1869

#### Attorney General's documents

- Sworn Statement of the Accused (Tom or Tshuanahusset) before the Justice of the Peace, April 7, 1869  
Sworn Testimonial of John Norton before the Justice of the Peace, April 2, 1869  
Sworn Testimonial of Sue Tas before the Justice of the Peace, April 7, 1869

#### Trial Judge's notes

- Supreme Court Record, Judge Needham's Bench Notes

- Distribute copies of the chart *Examining the Evidence* to individuals or pairs to record their examination of their assigned documents. Remind students that their notes on this sheet are instrumental in gathering the required evidence to make a recommendation regarding a retrial.
- After completing the activity chart, invite each student team to share their notes, to ask questions, or to offer preliminary comments about evidence or the possibility of a retrial.

**Examining the Evidence**

Source of evidence	Statements about guilt or innocence	Evidence (objects, reasons, clues) to support the statement	Your own questions or ideas	Does it suggest: <ul style="list-style-type: none"> <li>• Trial bias?</li> <li>• Important new evidence?</li> <li>• Tampered evidence?</li> </ul>
<i>British Colonial: March 24, 1868</i>	<i>Relatives of an Indian who is waiting trial may have wanted revenge on Robinson</i>	<i>No reason why Natives might want revenge on Robinson; Indicated that Robinson's gun, clothes, and books were missing</i>	<i>Perhaps theft was the motive, not revenge; Would Native people have been able to trail or otherwise have need for Robinson's books?</i>	<i>Possible trial bias. If the jury read this newspaper account they might be influenced in their thinking before the trial began</i>

Great Unsolved Mysteries in Canadian History © MysteryQuest 3 - The Trial of Tshuanahusset: Fair or Foul? MysteryQuest 3 Home Website - Who Killed William Robinson? Race, Justice, and Settling the Land

### Reach a conclusion

- Remind the students of their critical task: to examine the case to determine whether there is sufficient evidence to recommend a retrial.
- Using *Step 3: Reach your conclusions*, explain to students the importance of summarizing their findings as the basis for their conclusion about a retrial. Refer back to *The Task* for more detailed descriptions of the three possible grounds for retrial: trial bias, new evidence, and evidence tampering.

**STEP 3: REACH YOUR CONCLUSIONS**

Once you have accumulated sufficient evidence and thought about the evidence in the newspaper articles, it is time to summarize what you have found and draw your conclusions about the justification for a retrial of Tshuanahusset. Use the chart *Summary of Findings* to list all the reasons for and against justifying a retrial on each of the three grounds: trial bias, new evidence, and evidence tampering. You should complete three of these summary charts, using one for each of the three grounds. These charts will provide the foundation of your recommendation for or against a retrial.

- Copy and distribute to each student three copies of the *Summary of Findings* activity chart. Direct students to first complete the charts individually, one for each of the possible grounds for retrial. Next, invite students to compare their findings and conclusions with a partner and explain the justifications for their conclusions.

**Summary of Findings**

Complete a chart for each of the following grounds for a retrial:

- The judge or jury were biased
- New evidence would have changed the verdict
- Evidence was fabricated or tampered with

Reasons for a retrial		Reasons against a retrial	

Based on the evidence, my conclusion is that the evidence:

Indicates NO BASIS for a retrial <input type="checkbox"/>	Suggests a retrial MIGHT NOT BE warranted <input type="checkbox"/>	Suggests a retrial MIGHT BE warranted <input type="checkbox"/>	Indicates CLEAR GROUNDS for a retrial <input type="checkbox"/>
--	---	---	---

Explanation for conclusion:

Great Unsolved Mysteries in Canadian History © MysteryQuest 3 - The Trial of Tshuanahusset: Fair or Foul? MysteryQuest 3 Home Website - Who Killed William Robinson? Race, Justice, and Settling the Land

## Present the recommendation for retrial

- Present the critical question: Is a retrial justified?
- Using *Step 4: Create a PowerPoint presentation*, guide individual students, partners, or small teams to create PowerPoint presentations that convincingly argue their recommendation with accompanying evidence.
- If students are unfamiliar with PowerPoint, use the website listed in Step 4 to lead a tutorial for the whole class (with an LCD projector and computer) or for small groups (with a single computer).
- Invite students to share their presentations with others in the class.

### STEP 4: CREATE A POWERPOINT PRESENTATION

Now that you have examined the documents and summarized your findings, you are ready to answer the question "Do you recommend a retrial for Tshuamahusset?" You are to present in a clear and convincing manner your recommendations and supporting reasons using PowerPoint, a well-known electronic presentation tool. For help in creating your presentation, consult the websites listed below. If you are a beginner, you can learn how to use PowerPoint; if you have used it before, you can learn how to do so even better.

*Electric Teacher PowerPoint Tutorials*  
*Education World Techtorial*

## Evaluation

- Use *Assessing Inferences Drawn from Evidence* to evaluate how well students identified relevant statements from the historical documents and drew plausible conclusions about them.



MysteryQuest 3

Evaluation Materials 1 (Rubric)

### Assessing Inferences Drawn from Evidence

	Outstanding	Very good	Competent	Satisfactory	In-progress
<b>Identifies relevant and important evidence</b>	Identifies the most important and relevant statements in the documents.	Identifies the required number of relevant statements, including most of the important ones in the documents.	Identifies some relevant statements in the documents, but the important ones are omitted.	Identifies some relevant statements in the documents, but none of the important ones are included.	Identifies no relevant statements in the documents.
<b>Draws plausible inferences</b>	Draws highly plausible inferences about the implications of the statements; provides convincing reasons for the inferences.	Draws plausible inferences about the implications of the statements; provides good reasons for the inferences.	Draws generally plausible inferences about the implications of the statements; provides reasons for some of the inferences.	Draws some plausible inferences about the implications of the statements; provides little justification for the inferences.	Draws generally implausible inferences about the implications of the statements; provides very little justification for the inferences.

- Assess student summaries or encourage peer assessment using the rubric *Assessing Reasons For and Against*. No grades need be assigned here if the intended goal is to provide feedback for the authors prior to their final presentation.



MysteryQuest 3

Evaluation Materials 2 (Rubric)

### Assessing Reasons For and Against

	Outstanding	Very good	Competent	Satisfactory	In-progress
<b>Identifies the reasons for</b>	Identifies the most important evidence <i>for</i> the conclusions.	Identifies most of the important evidence <i>for</i> the conclusions.	Identifies some relevant and important evidence <i>for</i> the conclusions.	Identifies very little relevant evidence <i>for</i> the conclusions.	Identifies no relevant evidence <i>for</i> the conclusions.
<b>Identifies the reasons against</b>	Identifies the most important evidence <i>against</i> the conclusions.	Identifies most of the important evidence <i>against</i> the conclusions.	Identifies some relevant and important evidence <i>against</i> the conclusions.	Identifies very little relevant evidence <i>against</i> the conclusions.	Identifies no relevant evidence <i>against</i> the conclusions.
<b>Offers plausible conclusions</b>	The conclusions are highly plausible and highly justifiable in light of the evidence provided.	The conclusions are clearly plausible and justifiable in light of the evidence provided.	The conclusions are plausible and somewhat justifiable in light of the evidence provided.	The conclusions are plausible but are barely justifiable given the evidence provided.	The conclusions are implausible and not justifiable given the evidence provided.

- Use the rubric *Assessing the Presentation of Conclusions* to evaluate students' presentations of their recommendation and support.



MysteryQuest 3 Evaluation Materials 3 (Rubric)

**Assessing the Presentation of Conclusions**

	Outstanding	Very good	Competent	Satisfactory	In-progress
<b>Convincing conclusions</b>	Conclusions are thoroughly supported with highly convincing evidence.	Conclusions are well supported by the evidence with only minor gaps or unaddressed issues.	Conclusions are consistent with the evidence provided but key issues are inadequately addressed.	Conclusions are offered but reasons are weak.	No clear conclusions are offered or the evidence is largely irrelevant.
<b>Use of documentary evidence</b>	References to documentary evidence are abundant and excellently chosen.	References to documentary evidence are abundant and generally well chosen.	Good use of documents but more are needed.	Relatively few documents are cited and these are not necessarily the most relevant.	Almost no appropriate documents are cited.
<b>Presentation format</b>	Excellent use of the presentation format. Is an exemplar to show others.	Uses presentation features to produce a generally clear, sequenced, and engaging presentation.	Some aspects of the presentation format are effective while other elements are confusing or distracting.	Overall effect takes away from main message.	Presentation is so confusing and cluttered that it is very difficult to understand the message.
<b>Writing mechanics</b>	Error-free in grammar and spelling.	An occasional minor error in grammar or spelling.	Text is generally understandable but contains numerous errors in spelling and grammar.	Errors detract from the overall effect.	The many serious errors in grammar and spelling make it very difficult to understand the presentation.

Great Unsolved Mysteries in Canadian History ©  
 MysteryQuest 3 - The Trial of Tshuanahusset's Fair or Foul?  
 MysteryQuest 3 Home Website - Who Killed William Robison? Race, Justice, and Settling the Land

## Extension

- Invite students to work individually or as a class to pursue the suggested activities listed in *Extension*.

### EXTENSION

#### Look for further evidence

In addition to the newspaper accounts, two other sources of evidence also shed light on the fairness of Tshuanahusset's trial. One set of documents assembled by the Attorney General contains the sworn testimonials made by various people to justice officials before the trial as the justice officials were gathering evidence about the murders of Giles Curtis and William Robison. The other set of documents consists of notes called "Bench Notes" that Supreme Court Justice Needham jotted down "from the bench" as he listened to the witnesses during the trial. They are the only surviving detailed record of the trial of Tshuanahusset, outside of the newspaper report of June 3, 1869. The Attorney General's documents and the Judge's notes are found in *Evidence in the Case*. Read through some of these documents, looking for evidence that might confirm your conclusions or cause you to change your mind about the justification for a retrial.

#### Who killed Giles Curtis?

The murderer of Giles Curtis was never found. Examine the documents listed below, found at the MysteryQuest 3 home website "Who Killed William Robison?" Develop a theory as to who was responsible for the death of Curtis.

- The Curtis Murder: Coroner's Inquest
- The Victoria Police Charge Book
- The Curtis Murder, Magistrate's Court
- Community Petition, where the people of Salt Spring Island ask for police protection after Curtis' death

#### Did Salt Spring Island have a racial problem?

Look for possible evidence found on maps and graphs to draw a conclusion about the nature and extent of racial tensions on Salt Spring Island. The sources below can be found in the Maps section at The Archives of the MysteryQuest 3 home website:

- maps that document settlement by ethnicity;
- graphed evidence from the census of 1881 about mixed race marriages;
- the graph "Black-White Pre Emption History, 1859-1886."

#### Create a letter or diary entry

Read the diaries and letters from settlers, found in The Archives section of the home website for this MysteryQuest. Write a realistic, in-character letter from one of these individuals to one of the people appearing in the Cast of Characters.

#### Write a historical biography

Sylvia Stark was a freed African-American slave who took up land on Salt Spring Island with her husband, her father, and her children in the early 1860s. Read "The recollections of Sylvia Stark", found in three parts at the MysteryQuest 3 home website. Use this information (as well as any other information you can find on the site, including the Cast of Characters) to write a short biography of the Stark Family on Salt Spring Island.