



# Is Tshuanahusset Guilty Beyond a Reasonable Doubt?

*This MysteryQuest examines documents related to the 1868 murder of William Robinson and the trial and conviction of an Aboriginal man accused of the murder. Students learn to uncover, analyse, and evaluate evidence in court records before coming to their own conclusion about the verdict.*

*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/14/indexen.html>**

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*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, law, social studies, civics

## **Key Topics**

- Canadian justice system
- Aboriginal and European relations in the 1600s
- colonial society in British Columbia

## Critical Challenge

Does the evidence provide proof beyond a reasonable doubt that Tshuanahusset murdered William Robinson?

## Broad Understanding

- Students will learn to find, analyse, and evaluate evidence in court records.
- Students will learn to use evidence to come to plausible conclusions.

## Requisite Tools



### *Background knowledge*

- knowledge of some of the basic principles of Canadian law
- knowledge of British Columbia colonial society



### *Criteria for judgment*

- criteria for sound conclusion (e.g., plausible, supported with accurate evidence)



### *Critical thinking vocabulary*

- categorize
- evaluate



### *Thinking strategies*

- data charts
- rating chart for evidence
- scale for determining guilt or innocence



### *Habits of mind*

- attention to detail

## 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/14/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 Robinson murder

- Using *Introduction* as a guide, explain to students the challenge that is the focus of their investigation.
- Using *The Task* as a guide, outline the activities that students will undertake.
- For additional historical background information about possible sources of conflict in the settler society in western Canada, you may want to read *Relations Between First Nations People and Settlers*, available as a briefing sheet support material for MysteryQuest 3.
- You may want to download and display pictures of the Colony of Vancouver Island (and Salt-spring Island) and other related events.

#### 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.

If you looked at the evidence, would you be convinced (beyond a reasonable doubt) that Tshuanahusset killed William Robinson?

#### THE TASK

In this MysteryQuest you are invited to take on the role of a jury member at the trial of Tshuanahusset for the murder of William Robinson. You will examine key pieces of evidence presented at the trial. Your task is to answer the question, "Does the evidence provide proof beyond a reasonable doubt that Tshuanahusset committed the murder, as accused?"

In reaching your decision, you will first clarify the meaning of the phrase "beyond a reasonable doubt" and familiarize yourself with the events leading up to the trial and conviction of Tshuanahusset. You will read various documents to identify the evidence provided by a number of witnesses and classify it according to the different kinds of evidence presented in court. Based on your analysis of the credibility and adequacy of the evidence, you will reach your own conclusion about Tshuanahusset's guilt or innocence.

### Clarify proof "beyond a reasonable doubt"

- Using *Step 1: Clarify proof "beyond a reasonable doubt"* as a guide, lead the class in a discussion of the meaning of the term. Ask students to work with a partner to suggest situations in which evidence was given and ask the rest of the class to decide if that evidence would lead to "proof beyond a reasonable doubt" in a criminal trial (e.g., if someone is seen in the vicinity of the crime but there is no other evidence to suggest guilt or if a person has a motive but there is no other evidence). Encourage students not to suggest obvious scenarios.
- After a number of scenarios have been discussed, ask students to clarify a definition. Help students to understand that "beyond a reasonable doubt" means that there must be no other reasonable explanation other than that the accused is guilty. If there is any other reasonable explanation, the accused should be found not guilty.

#### STEP 1: CLARIFY PROOF "BEYOND A REASONABLE DOUBT"

To evaluate whether the evidence in the William Robinson murder trial gives you proof "beyond a reasonable doubt," you must be clear in your mind what this means. It refers to the level of certainty required to declare an accused person guilty of a crime. Different standards of proof are required by different courts in order to establish guilt/liability. Criminal courts demand the highest standard of proof of any court. This is because finding someone guilty can result in the loss of liberty and, in previous times, the loss of life. In order for an accused to be found guilty, the evidence must establish "beyond a reasonable doubt" that he or she is guilty. "Reasonable doubt" does not mean you are absolutely certain, but it does mean that the body of evidence is sufficiently convincing that you would be willing to rely upon this kind of proof without hesitation when making decisions in your own life. There must be no reasonable explanation for what happened other than that the accused did it. If there is any other reasonable explanation, the accused should not be found guilty.

## Learn about the trial of Tshuanahusset

- Using *Step 2: Learn about the trial of Tshuanahusset* as a guide, provide students with information about the events surrounding the trial. Distribute downloaded documents or direct students to read the documents listed in the Secondary Documents section of *Evidence in the Case*.
- Point out that these are secondary sources because they are written by historians who created the website. Primary sources, which they will examine later, are documents created at or near the time of the event by people involved in some way.
- You may choose to have students begin their investigation using a jigsaw strategy. Divide students into groups of three to form their home group. Instruct members of each group to choose a number from 1 to 3. Every student assigned the number 1 will access the first document listed in the Secondary Documents section of *Evidence in the Case* (#2 – the second, #3 – the third). When they have completed that portion of their assignment, all students in the class assigned #1 will meet to discuss and clarify their information (as will the #2s and #3s). When students in each numbered group are certain they understand the information, ask them to return to their home groups to share what they have learned with the two other members of their home group.

### STEP 2: LEARN ABOUT THE TRIAL OF TSHUANAHUSSET

Your next task is to learn more about the events surrounding the murder and the trial. In the "Secondary documents" section of *Evidence in the Case* you will find three documents. Read these brief accounts written by the historians who created the website. These documents are called **secondary sources**.

### EVIDENCE IN THE CASE

#### Secondary documents

Welcome

The Murder (Introduction)

Chinook Jargon – Language of the Court

## Consider different types of evidence

- Point out that before investigating the evidence brought against Tshuanahusset, it would be useful to identify the kinds of evidence used in a court to establish guilt or innocence.
- Using *Step 3: Consider different types of evidence* as a guide, describe for students the four types of evidence that are commonly presented at criminal trials. Explain that the various types of evidence are evaluated differently - some are considered by law to be more believable than others.
- Duplicate and distribute copies of *Kinds of Evidence Offered in Court*. Using an overhead transparency, discuss with students the four kinds of evidence:
  - *Hearsay or second-hand evidence* – not considered reliable; the person did not see the event but is reporting what someone else said.

### STEP 3: CONSIDER DIFFERENT TYPES OF EVIDENCE

Before evaluating the evidence brought against Tshuanahusset, it is useful to identify the kinds of evidence used to establish guilt or innocence. Below are brief explanations of four types of evidence that are commonly presented in criminal trials. These various kinds of evidence are evaluated differently — in other words, some evidence is more believable than others, as far as a court of law is concerned. The kinds of evidence are listed from the weakest (or least believable) to the strongest (or most believable):

- *Hearsay or second-hand evidence*: Hearsay evidence is not considered to be reliable evidence since it is information you did not see or hear yourself but was reported to you by others (your friend tells you what another person did).
- *Character evidence*: Evidence about the person's general behaviour and traits may be used to decide whether or not the accused person was of a sufficiently good or bad character that he or she might be likely to commit the crime (a witness stating she never heard the accused person hurt anyone or ever tell a lie).
- *Circumstantial or indirect evidence*: Circumstantial evidence is the evidence about the circumstances in which the crime occurred that indirectly suggests what might have happened (the accused person was seen in the neighbourhood around the time of the crime).
- *Direct evidence*: Direct evidence may be "real evidence" which would consist of an object or document (a video or audio tape of the event) or "eye-witness testimony" (a witness reporting what she saw the accused person do at the scene of the crime) that directly establishes the action taken by the accused person.

Can you identify which kind of evidence is represented by each of the following?

1. finger prints of the accused person in the house where the crime was committed;
2. the criminal record of the accused person;
3. a confession by the accused person;
4. a newspaper report of what eye-witnesses saw at the crime scene.

If you are unsure whether you correctly identified each piece of evidence, or if you want to learn more about these kinds of evidence, please read *Kinds of Evidence Offered in Court*.

- *Character evidence* – information about a person may be used to decide whether the person might be likely to commit the crime.
- *Circumstantial or indirect evidence* – indirectly suggests what might have happened.
- *Direct evidence* – consists of a document or “eye-witness” account that directly establishes the action taken by the accused.

- Ask students to work in groups of four and describe a possible scenario of a person accused of a crime (e.g., the person is accused of stealing a large sum of money from his/her employer). Instruct each group to develop one piece of each kind of evidence in the case. The evidence may be for the prosecution or the defense but students must write out their statements. Explain that each member of the group will be called upon to give their evidence in “court.”
- When groups have developed their evidence, call upon all the witnesses for the prosecution before calling on all the witnesses for the defense. Remind students that they may not change their evidence after hearing earlier testimony.
- When all the evidence has been heard, ask students to decide, by show of hands, if there is reasonable doubt to convict the accused. Ask also which kind of evidence was the most convincing and the least convincing.

#### STEP 4: EXAMINE THE EVIDENCE

It is time now to examine some of the evidence presented at Tshuanahusset's trial. In the “Primary documents” section of *Evidence in the Case* you will find six documents. These include testimony by the accused and by two witnesses, notes from the judge, and two newspaper accounts.

For each of these documents, complete the chart *Locating and Labelling Evidence* by providing the following information:

- what evidence is presented in the document to suggest that Tshuanahusset committed the murder?
- how does this evidence relate to Tshuanahusset's guilt or innocence?
- and what kind of evidence is this: hearsay, character, circumstantial, or direct evidence?

#### KINDS OF EVIDENCE OFFERED IN COURT

Common law in Canada has very strict rules about what can be introduced as evidence when trying to establish the guilt or innocence of a person. Different kinds of evidence are evaluated differently — some evidence, in other words, is better than others, as far as a court of law is concerned. Here is an overview of four types of evidence that are commonly presented in a criminal trial. They are organized here from the weakest form of evidence that might be presented in criminal trial in Canada today, to the strongest.

##### Hearsay or second-hand evidence

If you are presenting evidence at a criminal trial and you report what someone else has said, it will generally not be accepted as evidence by the judge. Evidence of something that you did not see yourself as a witness is called hearsay evidence, and is not admissible in a trial of law. The court generally believes that evidence should be given directly by the person who witnessed the event or behaviour. Only those who are eye-witnesses to a relevant act, in other words, should be called as sworn witnesses in the trial. Because it is not direct evidence, hearsay evidence is sometimes called “second-hand evidence” or “rumour.”

However, if you have heard the accused describe what he or she claims to have done (i.e., confess to a crime), or if you heard the accused talk about his or her intention to commit a crime, that may be accepted as direct evidence of the person's beliefs or intentions and is not hearsay evidence about what she really did.

For more information about hearsay evidence, consult the following sources:  
Duhaime's Canadian Law Dictionary  
Wikipedia

##### Character evidence

While it seems strange to us, when someone was committed of a crime before the eighteenth century (1700s), criminal courts paid little attention to the specific pieces of evidence relating to the crime itself; even if it were available, they would have had little interest in “forensic evidence” of the type our courts rely on so heavily today. Instead of relying on specific pieces of evidence to decide whether someone committed a crime, the court instead relied heavily on evidence of general good character to decide whether or not the person was of such bad character that he or she might have committed such a crime. This kind of evidence is not considered good enough to ensure a conviction in today's criminal courts.

We still have the remains of this concern with good character in the criminal system today. Someone claiming their innocence when charged with a crime might call “character witnesses” during the trial to attest to their previously good character and behaviour.

For more about character witnesses, consult the following source:  
The Citizens Information Online, Ireland

##### Circumstantial evidence

Circumstantial evidence is the evidence about the circumstances or surroundings in which the crime occurred. It does not actually prove that the accused person committed the crime, but it suggests that the link is possible. Suppose a detective finds the fingerprints of an accused person on the safe from which jewels were stolen. This evidence links the person to the safe — it indicates that the person touched the safe — but it doesn't prove the person opened the safe or stole the jewels.

For more on circumstantial evidence, consult the following source:  
Duhaime's Canadian Law Dictionary

##### Direct evidence

Direct evidence presented at a trial can be an artifact (like a signed contract or the murder weapon), sometimes called “real evidence”. Presenting evidence about the murder weapon would mean establishing that this was the object that caused the injuries leading to the victim's death. It would not necessarily establish who used the object, but it would be direct evidence about what brought about the death.

More commonly, direct evidence is presented in spoken form, called testimony. Testimony consists of the witness's descriptions, opinions, or inferences that are reasonably based on his or her own perceptions of the “facts”. The witness should be an eye-witness to events relating to the crime or incident at hand. Direct observations are considered among the best kind of evidence, particularly when they are supported by other people's observations. Together, these provide the evidence used to persuade the judge and/or jury of the “true facts” in the case.

## Examine the evidence

- Using *Step 4: Examine the evidence* as a guide, explain that students are now ready to examine some of the evidence presented at Tshuanahusset's trial. Direct students to the six documents in the Primary Documents section of *Evidence in the Case*.
- You may choose to have students complete this portion of the activity by forming new jigsaw groups of 6 — one for each document, completing the activity as previously described.

#### EVIDENCE IN THE CASE

##### Primary documents

###### Attorney General's files

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

###### Trial Judge's notes

Supreme Court Record, Judge Needham's Bench Notes, June 2, 1869

###### Newspaper articles

W. Smithe, Letter to the Editor, *British Colonist*, June 5, 1869  
“The Salt Spring Island Murder”, *British Colonist*, July 3, 1869

- Duplicate and distribute to students copies of *Locating and Labelling Evidence*. Explain that after listing the evidence presented in the document, they may want to determine what kind of evidence it is before answering how the evidence relates to Tshuanahusset's guilt or innocence. If students have gathered the evidence using a jigsaw approach, you may choose to have students complete their charts individually after the home group has shared their information or instruct them to complete their charts in their groups.

**MysteryQuest 14** Support Materials 1 (Activity Sheet)

**Locating and Labelling Evidence**

Sworn Testimonial of John Norton       Judge Needham's Bench Books  
 Sworn Testimonial from Witness Sue-Tsa (Dick)       "Letter to the Editor", *British Columbia*, June 5, 1869  
 Sworn Statement of the Accused       "The Salt Spring Island Murder", *British Columbia*, July 3, 1869

What evidence is presented in the document to suggest that Tshuanahusset committed the murder?	How does this evidence relate to Tshuanahusset's guilt or innocence?	What kind of evidence is it?
		<ul style="list-style-type: none"> <li>Hearsay</li> <li>Character evidence</li> <li>Circumstantial evidence</li> <li>Direct evidence (eye witness or real evidence)</li> </ul>
		<ul style="list-style-type: none"> <li>Hearsay</li> <li>Character evidence</li> <li>Circumstantial evidence</li> <li>Direct evidence (eye witness or real evidence)</li> </ul>
		<ul style="list-style-type: none"> <li>Hearsay</li> <li>Character evidence</li> <li>Circumstantial evidence</li> <li>Direct evidence (eye witness or real evidence)</li> </ul>
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### Question the evidence

- Using *Step 5: Question the Evidence* as a guide, explain how students should summarize the main evidence they have compiled.

**STEP 5: QUESTION THE EVIDENCE**

After you have identified numerous pieces of evidence and classified the kinds of evidence presented in the six documents, summarize the main evidence you have compiled in a new chart *Questioning the Evidence*. Organize the evidence according to its kind, and then record possible questions or weaknesses for each piece of evidence. Think of the explanation for each kind of evidence to help you identify potential concerns about the reliability of the evidence provided. The following questions may also be of help to you in raising potential concerns about the evidence:

- Is the witness a reliable source of evidence about the crime?
- Might the witness be biased against the accused?
- Does the evidence point to the accused or could it implicate other people?
- Are the authorities sure that the evidence is legitimate?
- Does the evidence support the conclusions offered?

- Duplicate and distribute to students copies of *Questioning the evidence*. Explain that this chart will give them an opportunity to evaluate the strengths and weaknesses of the evidence by noting any questions the evidence raises.
- Ask students to consider what concerns they have when they read the evidence. Suggest they consider the following questions in their evaluation:
  - Is the witness a reliable source of evidence about the crime?
  - Might the witness be biased against the accused?
  - Does the evidence point to the accused or could it implicate other people?
  - Are the authorities sure that the evidence is legitimate?
  - Does the evidence support the conclusions offered?

**MysteryQuest 14** Support Materials 2 (Activity Sheet)

**Questioning the Evidence**

Type of evidence	Summary of each kind of evidence	Potential questions or weaknesses in the evidence
<i>Hearsay</i>		
<i>Character</i>		
<i>Circumstantial</i>		
<i>Direct (eye witness testimony and real evidence)</i>		

Does this evidence provide you with "proof beyond a reasonable doubt" that Tshuanahusset committed the crime?

Overwhelming proof beyond any doubt that he is guilty	Proof beyond a reasonable doubt that he is guilty	He is likely guilty but there is reasonable doubt	He is most likely innocent	He is definitely innocent
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Explanation:

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## Justify your verdict

- Using *Step 6: Justify your verdict* as a guide, instruct students to indicate on a scale (found on their charts *Questioning the Evidence*) their conclusion about Tshuanahusset's guilt or innocence. Explain that, in addition, they are to prepare a one-paragraph "verdict" with at least four reasons explaining why the evidence does or does not provide proof beyond a reasonable doubt that Tshuanahusset killed William Robinson.

### STEP 6: JUSTIFY YOUR VERDICT

Does this evidence provide you with proof beyond a reasonable doubt that Tshuanahusset is guilty? Whether or not you have enough evidence, your task is to come to a conclusion about Tshuanahusset's guilt or innocence. Indicate your conclusion on the scale (provided in the chart *Questioning the Evidence*) ranging from "Overwhelming proof beyond any doubt that he is guilty" to "He is definitely innocent." Prepare a one paragraph "verdict" with at least four reasons explaining why the evidence provided does or does not provide you with proof beyond a reasonable doubt that Tshuanahusset killed William Robinson.

## Evaluation

- Use the rubric *Assessing the Kinds of Evidence* to evaluate students' ability to locate and label evidence in primary documents. Use the rubric *Assessing the Quality of Evidence* to evaluate students' "verdict" and reasons.



MysteryQuest 14 Evaluation Materials 2 (Rubric)

### Assessing the Quality of Evidence

	Outstanding	Very good	Competent	Satisfactory	In-progress
<b>Recognizes possible weaknesses</b>	Recognizes and very clearly explains the most important weaknesses in the evidence provided.	Recognizes and clearly explains most of the important weaknesses in the evidence provided.	Recognizes some important weaknesses in the evidence provided; the explanations are generally quite clear.	Recognizes some weaknesses in the evidence provided; the explanations are only occasionally clear.	Recognizes almost no weaknesses in the evidence provided; none of the explanations are clear.
<b>Offers plausible conclusion</b>	The conclusion is highly plausible and highly justifiable in light of the evidence.	The conclusion is clearly plausible and justifiable in light of the evidence.	The conclusion is plausible and somewhat justifiable in light of the evidence.	The conclusion is plausible but is barely justifiable given the evidence.	The conclusion is implausible and not justifiable given the evidence.

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MysteryQuest 14 Evaluation Materials 1 (Rubric)

### Assessing the Kinds of 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 relevant statements, including most of the important ones in the documents.	Identifies some relevant statements in the documents, but many important ones are omitted.	Identifies some relevant statements in the documents, but many important ones are omitted.	Identifies no relevant statements in the documents.
<b>Identifies the kind of evidence</b>	Correctly labels the kind of evidence provided in each of the documents.	Most of the time, correctly labels the kinds of evidence provided in each of the documents.	Correctly labels much of the evidence provided in the documents; errors are generally understandable.	Correctly labels some of the evidence provided in the documents.	Incorrectly labels almost all of the evidence provided in the documents.

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## Extension

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

### EXTENSION

#### What additional evidence would you need?

Describe the additional evidence you would need to conclude whether or not Tshuanahusset was guilty of the crime. List this evidence according to the four categories of evidence.

#### Prejudice in the justice system

As you know, William Robinson was African-American and Tshuanahusset was an Aboriginal man. Explore some of the documents within the section entitled *Settler Society* to understand whether or not racial background might have had any bearing on the case. You may also read the documents in the *Whippings and Hangings* section of the main website. Does this evidence convince you that the justice system in the colony of Vancouver Island was prejudiced against First Nations people?

#### Explore other challenges

Apply your detective skills to other mysteries associated with William Robinson's murder. MysteryQuest 9 challenges you to explore the underlying social and institutional attitudes which may have influenced this historical event, while MysteryQuest 3 invites you to decide whether there is reason to suspect that Tshuanahusset did not receive a fair trial.