

But the Court does not act *proprio motu*; in giving a mandamus the Court acts only upon the application of some person, natural or artificial, who is entitled to ask the Court for an order.

Two distinct questions were involved: (1) as to the right, i.e., the legal power, of the applicant to apply to the Court at all; (2) as to the right of the applicant to the relief sought.

As to the first question: while the Provincial Board of Health is not made a corporation by the Public Health Act, it is made a legal entity, wholly distinct from its individual members; it has duties to perform as a Board, and in the performance of these duties it may require the assistance of the Court. Indeed the Board, as a Board, is given the power specifically to apply to the Court in certain circumstances: sec. 83 (2) of the Public Health Act, R.S.O. 1914 ch. 218. The Board is not both a legal entity and not a legal entity; it has a right to be heard in Court. If there be anything in *Sellars v. Village of Dutton* (1904), 7 O.L.R. 646, inconsistent with this, it is not to be followed.

In *Metallic Roofing Co. v. Local Union No. 30* (1903), 5 O.L.R. 424, the appellants were held not to be a legal entity. *Re City of Ottawa and Provincial Board of Health* (1914), 33 O.L.R. 1, was well decided; and there is no difference between "status to subject to motion for mandamus" and "status to entitle to come into Court and ask for a mandamus."

As to the second question: assuming the entity of the Board and its power of applying to the Court, it has no right to the order asked for.

Under the law a mandamus is not granted unless the applicant can "shew that he has a clear legal specific right to ask for the intervention of the Court": *Regina v. Guardians of Lewisham Union*, [1897] 1 Q.B. 498, 501. No such right is given to the Board specifically or by implication.

Very extensive powers of investigation are given the Board by secs. 6 and 7 of the Public Health Act, but there is nothing to indicate any duty or power of supervision over the conduct of municipal councils in vaccination matters any more than in other matters.

The Local Board of Health (Toronto) had (since the hearing) refused to join in the application; and (semble) if that Board was willing to be added as an applicant, the case would not be advanced by the addition.

The Provincial Board having applied in good faith and in the public interest, it was not a case for costs.

LATCHFORD and MIDDLETON, JJ., agreed with RIDDELL, J.

LENNOX, J., agreed in the result.

*Appeal dismissed without costs.*