

SUTHERLAND, J.

DECEMBER 24TH, 1919.

RE PROVINCIAL BOARD OF HEALTH FOR ONTARIO  
AND CITY OF TORONTO.

*Public Health—Compulsory Vaccination—Vaccination Act, R.S.O. 1914 ch. 219, sec. 12—City Council Notified by Provincial Board of Health to Order Vaccination of Citizens—Failure of Council to Comply—Motion by Provincial Board for Mandamus to Council—Status of Board—Corporation—Parties—Public Health Act, R.S.O. 1914 ch. 218, secs. 15, 83.*

Application by the Provincial Board for a mandamus to the city corporation and the city council.

H. M. Mowat, K.C., for the applicants.

C. M. Colquhoun, for the corporation and council.

SUTHERLAND, J., in a written judgment, said that the application was for a peremptory order of mandamus directing the council effectively to order the vaccination or re-vaccination of all persons resident in the municipality who had not been vaccinated within 7 years, as provided by the Vaccination Act, R.S.O. 1914 ch. 219, and especially by sec. 12 thereof, and to issue a proclamation warning the public that sec. 12 is in force. That section provides:—

“In every municipality where smallpox exists, or in which the Provincial or Local Board of Health has notified the council that in its opinion there is danger of its breaking out owing to the facility of communication with infected localities, the council of the municipality shall order the vaccination or re-vaccination,” etc.

The fact that smallpox had existed in Toronto for some time past, and to a considerable extent, was common knowledge and was proved by the material filed on the application—indeed no attempt was made to controvert this. The Legislature must be assumed to have come to the conclusion, before it enacted sec. 12, that where smallpox was found to exist in a municipality it was in the public interest that vaccination or re-vaccination should be ordered. Smallpox having apparently, in the opinion of the Provincial Board of Health, been proved to exist, the chief officer for the Province of Ontario, by a written notice served on the mayor of the City of Toronto, on the 8th December, 1919, called his attention and that of the members of the council to the fact that there had been a large number of cases in the city, and directed or requested the mayor and council to carry out the provisions of the Vaccination Act, sec. 12, within 48 hours after receipt of the notice.