Unofficial English Translation of the Judgment of the Court

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Protection de la jeunesse — 226231 | | | | | 2022 QCCA 1653 |
| COURT OF APPEAL | | | | | |
|  | | | | | |
| CANADA | | | | | |
| PROVINCE OF QUEBEC | | | | | |
| REGISTRY OF | | | MONTRÉAL | | |
| Nos.: | 500-08-000544-215, 500-08-000545-212, 500-08-000546-210 | | | | |
| (505-24-000082-196) | | | | | |
|  | | | | | |
| DATE: | December 6, 2022 | | | | |
|  | | | | | |
|  | | | | | |
| CORAM: | | THE HONOURABLE | | JACQUES J. LEVESQUE, J.A.  MARK SCHRAGER, J.A.  MARIE-JOSÉE HOGUE, J.A. | |
|  | | | | | |
|  | | | | | |
| No.: 500-08-000544-215 | | | | | |
|  | | | | | |
| COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE | | | | | |
| APPELLANT – impleaded party | | | | | |
| v. | | | | | |
|  | | | | | |
| DIRECTOR OF YOUTH PROTECTION | | | | | |
| RESPONDENT – appellant | | | | | |
| and | | | | | |
| A | | | | | |
| B | | | | | |
| X | | | | | |
| RESPONDENTS – respondents | | | | | |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | | | | |
|  | | | | | |
| No.: 500-08-000545-212 | | | | | |
|  | | | | | |
| X | | | | | |
| APPELLANT – respondent | | | | | |
|  | | | | | |
| v. | | | | | |
|  | | | | | |
| DIRECTOR OF YOUTH PROTECTION | | | | | |
| RESPONDENT – appellant | | | | | |
| and | | | | | |
| A | | | | | |
| B | | | | | |
| RESPONDENTS – respondents | | | | | |
| and | | | | | |
| COMMISSION DES DROITS DE LA PERSONNE ET DE LA JEUNESSE | | | | | |
| RESPONDENT – impleaded party | | | | | |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | | | | |
|  | | | | | |
| No.: 500-08-000546-210 | | | | | |
|  | | | | | |
| A | | | | | |
| B | | | | | |
| APPELLANTS – respondents | | | | | |
|  | | | | | |
| v. | | | | | |
|  | | | | | |
| DIRECTOR OF YOUTH PROTECTION | | | | | |
| RESPONDENT – appellant | | | | | |
| and | | | | | |
| X | | | | | |
| RESPONDENT – respondent | | | | | |
| and | | | | | |
| COMMISSION DES DROITS DE LA PERSONNE ET DE LA JEUNESSE | | | | | |
| RESPONDENT – impleaded party | | | | | |
|  | | | | | |
|  | | | | | |
| JUDGMENT | | | | | |
|  | | | | | |
|  | | | | | |

|  |
| --- |
| **WARNING:** Disclosure, publication or broadcasting ban: The *Youth Protection Act* (“*YPA*”) prohibits the disclosure, publication or broadcast of information that would allow a child or the child’s parents to be identified, unless the tribunal so orders or so authorizes (sections 11.2 and 11.2.1 *YPA*). Every person who contravenes section 11.2.1 *YPA* commits an offence and is liable to a fine (section 135 *YPA*). |

1. The appellants appeal from a Superior Court judgment rendered on February 1, 2021 (the Honourable Yves Poirier), District of Longueuil, that allowed in part an appeal from a decision of the Court of Québec brought by the respondent, the Director of Youth Protection. In that judgment, the Superior Court varied certain orders made by the Court of Québec so that they applied only to the appellant X.
2. For the reasons given by Hogue J.A., with which Levesque J.A. concurs, the appeals are allowed in part, without legal costs, for the sole purpose of correcting the orders set out in paragraphs 345 and 346 of the judgment of the Court of Québec, previously varied by the Superior Court, so that they henceforth read as follows:

[translation]

[345] **ORDERS** the Director of Youth Protection to require that the Centre intégré de santé et de services sociaux A implement a protocol within a reasonable time period that sets out the steps to be taken when X spits during an intervention and report back to the Commission des droits de la personne et des droits de la jeunesse;

[346] **ORDERS** the Director of Youth Protection to require that the Centre intégré de santé et de services sociaux A adapt an isolation room to be safer for X and that the walls be covered with a material that prevents injury to X;

1. For his part, Schrager J.A. would have allowed the appeals in part, without legal costs, and restored the orders in paragraphs 345 and 346 of the Court of Québec judgment, directing them to the Director of Youth Protection rather than the Centre intégré de santé et de services sociaux A.

|  |  |  |
| --- | --- | --- |
|  | | |
|  | |  |
|  | | JACQUES J. LEVESQUE, J.A. |
|  | |  |
|  | |  |
|  | | MARK SCHRAGER, J.A. |
|  | |  |
|  | |  |
|  | | MARIE-JOSÉE HOGUE, J.A. |
|  | | |
| Mtre Catherine Gauvreau | | |
| Mtre Lysiane Clément-Major | | |
| BITZAKIDIS, CLÉMENT-MAJOR, FOURNIER (CDPDJ) | | |
| For the Commission des droits de la personne et des droits de la jeunesse | | |
|  | | |
| Mtre Véronique Crête | | |
| LEGAL DEPARTMENT OF THE CISSS A | | |
| For the Director of Youth Protection | | |
|  | | |
| Mtre Stéphane Pouliot | | |
| PRINGLE & ASSOCIÉS | | |
| For A and B | | |
|  | | |
| Mtre Charlotte Vanier Perras | | |
| COMMUNITY LEGAL CENTRE A | | |
| For X | | |
|  | | |
| Date of hearing: | May 12, 2022 | |

|  |
| --- |
|  |
|  |
| REASONS OF SCHRAGER, J.A. |
|  |
|  |

1. The appellants were granted leave to appeal from a Superior Court judgment rendered on February 1, 2021 (the Honourable Yves Poirier), District of Longueuil, that allowed an appeal from a judgment of the Court of Québec and limited the scope of certain orders made by the judge of the Court of Québec, Youth Division, so that they applied only to the child whose rights were wronged.[[1]](#footnote-1)
2. In addition to the question relating to the standard of review, the main issue in this appeal is whether a judge of the Court of Québec may make remedial orders that go beyond the individual situation of the child whose rights were wronged, and whether that same judge may also make orders to prevent the recurrence of the situation experienced by the child.

# FACTS

1. The facts and the difficult situation experienced by the adolescent are related in detail in the Court of Québec judgment.[[2]](#footnote-2) They are not contested by the respondent, the Director of Youth Protection (“**DYP**”).
2. On January 17, 2018, the Court of Québec, Youth Division, made an order requiring that the adolescent be placed in a rehabilitation centre because her safety and development were in danger within the meaning of the *Youth Protection Act*.[[3]](#footnote-3)
3. Pursuant to that order, the adolescent was placed in various units in rehabilitation centres. She also spent time in the hospital.
4. Specifically, the adolescent was placed in the individualized treatment unit (“I.T.U.”) of “[Unit B]” (unit B) in City A, a type of rehabilitation unit with a specific clientele of adolescents with mental and behavioural disorders.
5. The adolescent was also placed in the intensive supervision unit of “[Unit A]” (unit A) in City B, a type of rehabilitation unit that places restrictions on adolescents’ freedoms because they are at serious risk of endangering themselves or others.
6. During her stays in unit B and unit A, the adolescent was subject to multiple isolation and restraint measures.
7. On or about December 10, 2018, the adolescent and her parents each brought applications under section 91 *in fine* of the *YPA* before the Court of Québec, Youth Division, alleging that her rights had been wronged.
8. In her judgment, the Court of Québec judge declared that the adolescent’s rights had been wronged.
9. The declarations that rights were wronged related in particular to incidents that occurred while the adolescent was placed in units B and A. They concern, among other things, the multiple isolation and restraint measures the adolescent experienced, which involved:

• Episodes where the child hit her head against the concrete walls of small, dingy isolation cells that had no protective materials;

• Episodes where the adolescent’s head was covered with a sweater while she was being transported to prevent her from spitting on intervention officers, causing her to have difficulty breathing and to hyperventilate.

1. The wronged rights are also related to an incident on July 27, 2018, during which a counsellor in unit B refused to allow the adolescent to return to the rehabilitation centre after she had run away.
2. Given this context, the Court of Québec ordered several corrective measures under section 91 *in fine* of the *YPA*, which were appealed by the DYP before the Superior Court.
3. Without contesting that rights were wronged, the DYP argued that the Court of Québec had exceeded its authority under section 91 *in fine* of the *YPA* when it ordered the following corrective measures:

[translation]

**ORDERS** that the youth workers, counsellors, and intervention officers who work in the individualized treatment units receive specific training on mental health and report back to theCommission des droits de la personne et des droits de la jeunesse;

**ORDERS** that the individualized treatment units obtain support from a healthcare professional specializing in mental health and report back to the Commission des droits de la personne et des droits de la jeunesse;

**ORDERS** that Centre intégré de santé et de services A implement a protocol within a reasonable time period that sets out the steps to be taken when a child spits during an intervention and report back to the Commission des droits de la personne et des droits de la jeunesse;

**ORDERS** that the Centre intégré de santé et de services sociaux A adapt all its isolation rooms to be safer and that their walls be covered with a material that prevents injury.

1. The Superior Court allowed the DYP’s appeal in part. It essentially concluded that the general corrective measures ordered were not intended to correct the specific wrongs the adolescent had experienced, and, for that reason, varied the orders as follows:

[translation]

**ORDERS** that the youth workers, counsellors, and intervention officers responsible for X in the individualized treatment units receive specific training on mental health and report back to theCommission des droits de la personne et des droits de la jeunesse;

**ORDERS** that the individualized treatment units responsible for X obtain support from a healthcare professional specializing in mental health and report back to the Commission des droits de la personne et des droits de la jeunesse;

**ORDERS** that Centre intégré de santé et de services A implement a protocol within a reasonable time period that sets out the steps to be taken when X spits during an intervention and report back to the Commission des droits de la personne et des droits de la jeunesse;

**ORDERS** that the Centre intégré de santé et de services sociaux A adapt an isolation room to be safer for X and that its walls be covered with a material that prevents injury to X.

# JUDGMENT UNDER APPEAL AND ISSUES

1. Two issues were brought before the judge of the Superior Court. First, the judge had to determine the standard of review applicable to the debate before him. Second, he had to rule on the legality of the orders made by the Court of Québec judge.
2. On the first issue, the judge determined that he was faced with a question of law and that the standard of correctness applied. The judge found that the appeal concerned only the scope of the Court of Québec’s powers to order corrective measures under section 91 *in fine* of the *YPA*.[[4]](#footnote-4) The judge based this decision on the fact that the DYP did not contest the facts or that rights were wronged.[[5]](#footnote-5) As the appeal before the Superior Court related only to the Court of Québec’s power to order certain corrective measures, the judge concluded that the applicable standard was that of correctness.[[6]](#footnote-6)
3. On the second issue, the judge’s decision relied mostly on his reading of this Court’s decision in *Protection de la jeunesse — 123979.*[[7]](#footnote-7) While acknowledging that the *YPA* is remedial legislation that must be given a broad and liberal interpretation,[[8]](#footnote-8) the main principle the judge drew from the earlier judgment was that an order for corrective measures must be related to the child whose rights were wronged.[[9]](#footnote-9) He therefore varied the orders made by the Court of Québec judge to relate them directly to the child at issue.
4. The standard applicable in the Superior Court remains a live issue before this Court, as does the scope of the Court of Québec’s powers to make broad-based orders for corrective measures under section 91 *YPA*.

# POSITIONS OF THE PARTIES

1. Supported by the parents and the adolescent, who are also appellants in this case, the Commission argues that the Superior Court judge should have applied the standard of palpable and overriding error to determine whether the corrective measures ordered by the Court of Québec were materially related to the adolescent’s situation.
2. On the merits, the Commission argues that the broad scope of the corrective orders was justified by the facts of the case. The Commission states that the corrective measures to protect children must also serve to benefit groups of children in similar situations in the future. The Commission also argues that the interpretation whereby the Court of Québec may make broad-based orders is supported by a certain line of authority.
3. The respondent argues that the judge correctly identified the applicable standard and that the issue concerned a question of law because the facts were not disputed and he had to rule on the jurisdiction of the Court of Québec.
4. On the merits, the respondent argues that the Court of Québec is a statutory court with no powers other than those conferred upon it by the legislation. The respondent further states that this Court decided the issue in 2012 in *Protection de la jeunesse — 123979*,[[10]](#footnote-10)which applies as precedent in this case. The respondent reads that case as standing for the proposition that a measure ordered under section 91 *in fine* must be directly related to the child concerned in the case and may incidentally also bring about changes that benefit other children.

# ANALYSIS

## Standard of review

1. The appellants argue that the judge could not separate the issue from its factual context. They submit that the issue before the judge was not which orders a Court of Québec judge may make under section 91 *in fine* *YPA* but whether in this specific case the orders were related to the proven facts of the matter.
2. While this contention is not incorrect, the task before the Superior Court judge – and before this Court – is to define the scope of the powers of a Court of Québec judge under section 91 *in fine* *YPA*.This is a question of law. It has repercussions beyond the interests of the adolescent and affects legal rules that will have an impact on society as a whole.[[11]](#footnote-11) It was an exercise in statutory interpretation in a case where the facts were not contested (nor was the conclusion that rights were wronged). While orders must, of course, be adapted in light of this interpretation, the disposition of a judgment is always rendered based on the law and the facts at issue. But this does not change the fact that the Superior Court was seized of a question of law.

## Scope of the corrective measures

1. Sections 2.3, 2.4, 3, 8, 10, 11.1, 81, and above all 91 of the *YPA* are important in these reasons. They are reproduced as worded at the time of the hearing in the appended schedule.
2. In 2012, the Court had occasion to comment on the scope of the powers flowing from section 91 *YPA* in *Protection de la jeunesse — 123979*. In that judgment, the rights of the children concerned were wronged by a person, namely, a youth worker who had prevented two children from contacting their parents for 12 days.[[12]](#footnote-12) Bouchard J.A., writing for the Court, stated:

[translation]

[20] I understand the reasons of the judge of the Superior Court as stating that the remedial order made by the Court of Québec was quashed because the wrongful situation was corrected and because the Court of Québec is not empowered to order measures to prevent the recurrence of similar events.

[21] Respectfully, I do not share the opinion of the Superior Court judge. The *Youth Protection Act* is remedial legislation, and as such it must be given a large and liberal interpretation. If a Court of Québec judge considers that an order for a youth centre worker to receive training is an appropriate remedial measure in the circumstances of a specific case where rights are wronged, I see nothing in that view that falls outside of the law’s stated objectives and general principles.

[22] The fact that the wrongful situation was corrected changes nothing. Otherwise, section 91 *in fine* would permit a judge to declare only that rights were wronged and nothing more. This cannot have been the intention of the legislature, especially as section 2.3(a) of the *Act* states, “Any intervention in respect of a child and the child's parents under this Act (a) must be designed to put an end to and prevent the recurrence of a situation in which the security or the development of the child is in danger”.

[23] I further note that section 85 of the *Act* brings before the court certain articles of the *Code of Civil Procedure*, including article 46, which confers on judges the powers necessary for the exercise of their jurisdiction. Given that section 91 *in fine* specifically addresses the case of a youth worker who, even inadvertently, wrongs the rights of a child, nothing prevents a judge from making an order for mandatory training like the one in the present case to correct the situation and prevent its recurrence.

[24] Where I see a problem, however, is in the conclusions of the Court of Québec judge, where he also recommends that the respondent withdraw from the file and that someone else take charge of the children. Let me explain.

[25] In my opinion, the remedy contemplated in section 91 *in fine* must be related to the child whose rights were wronged. Reading this provision as a whole, it is obvious that the court has the case of a child before it. Decisions made under this law must be in the child’s interest and take into account all aspects of his or her situation. Section 73.1 of the *Act* even requires the court to issue separate orders for each child. Consequently, when the court finds that the rights of a child in difficulty have been wronged and orders that the situation be remedied, it may address only the situation of that child. Therefore, if the Director of Youth Protection were to follow the judge’s recommendation and remove the youth worker from the case of the respondent’s children, I do not see how requiring the worker to take training would be an adequate remedial measure for the children in question. The remedy set out in section 91 *in fine* must be a concrete remedy for the wrong. Élaine Demers J. expressed it this way in *F.J. R.-G.*, and I agree with this perspective.

[Emphasis added]

1. The issue in this appeal is whether an order can go beyond the wrongful situation affecting the child and, if so, what the limits on the scope of such an order should be, given that it must be written in a manner that prevents the recurrence and repetition of the wrongful situation. The lower courts have offered differing interpretations of this Court’s 2012 judgment and of section 91 *YPA*. There does, however, seem to be a trend among courts of first instance permitting broadly worded orders to correct certain wrongful situations.[[13]](#footnote-13) Those judgments are not under appeal and are not binding on the Court. Regardless, in some cases, the orders made do not contradict the principles set out below.
2. Section 41 of the *Interpretation Act*[[14]](#footnote-14) applies to the provision at issue and it must therefore receive a large and liberal interpretation.[[15]](#footnote-15) The interpretation of a statute must ensure “the attainment of its object and the carrying out of its provisions, according to their true intent, meaning and spirit”.[[16]](#footnote-16) The provisions of the statute at issue (the *YPA*) must be interpreted according to their grammatical and ordinary sense in accordance with the scheme of the *YPA*.[[17]](#footnote-17)
3. In paragraph [25] of *Protection de la jeunesse – 123979*, quoted above, this Court clearly stated that a remedy under section 91 *YPA* must be related to the child whose rights were wronged. The measures ordered must offer a concrete remedy for the child’s situation.[[18]](#footnote-18) It is important to recall the context in which that judgment was rendered, however. In that case, the two children in question had been deprived of all contact with their parents while they were provisionally placed with their grandmother. The principle set out by the Court must be understood in that context, that is, that the wrong involved a specific situation, not a general DYP policy or the physical state of a rehabilitation centre, as in this case.
4. At the time of that case, subsection 2.3(a) *YPA* read as follows:

|  |  |
| --- | --- |
| **2.3.** Any intervention in respect of a child and the child’s parents under this Act | **2.3.** Toute intervention auprès d’un enfant et de ses parents en vertu de la présente loi doit: |
| (a) must be designed to put an end to and prevent the recurrence of a situation in which the security or the development of the child is in danger; and | a) viser à mettre fin à la situation qui compromet la sécurité ou le développement de l’enfant et à éviter qu’elle ne se reproduise; |

1. Section 91 paragraph 4then stated:

|  |  |
| --- | --- |
| Where the tribunal concludes that the rights of a child in difficulty have been wronged by persons, bodies or institutions, it may order the situation to be corrected. | Si le tribunal en vient à la conclusion que les droits d’un enfant en difficulté ont été lésés par des personnes, des organismes ou des établissements, il peut ordonner que soit corrigée la situation. |
|  | [Emphasis added] |

1. The Superior Court judge correctly understood paragraph [25] of this Court’s judgment, quoted above, when he wrote that [translation] “there must therefore be a connection between the corrective order and the child whose rights were wronged.”[[19]](#footnote-19) Contrary to what the judge decided, however, it is not necessary that the remedial measure apply only to the child who has been a victim of the wrong. The corrective measure may implement a protocol that relates to how the child at issue was treated but that also necessarily affects other children. The measure may also affect an “institution”, as stated in the final paragraph of section 91:

|  |  |
| --- | --- |
| Where the tribunal concludes that the rights of a child in difficulty have been wronged by persons, bodies or institutions, it may order the situation to be corrected. | Si le tribunal en vient à la conclusion que les droits d’un enfant en difficulté ont été lésés par des personnes, des organismes ou des établissements, il peut ordonner que soit corrigée la situation. |
|  | [Emphasis added] |

1. The Court did not contradict this in *Protection de la jeunesse – 123979*.
2. When, as in the earlier case, a worker contributes to a situation in which certain children are wronged, the measure sought must apply only to those children and, perhaps, to that worker. When it is proven, however, that the source of the problem that led to the wrong is institutional or systemic in nature and that the wrong may have been caused by multiple people or multiple institutions or by the state of the premises, Court of Québec judges may make orders to remedy the wrongful situation at its source. For example, when a wrongful situation is proven to have occurred as a result of insufficient training of personnel on a given topic, the judge may order that all staff in the institution with direct responsibility for and in direct contact with children receive training on that topic. That being said, training cannot be ordered for all staff working in youth protection institutions across the province. To do so would render meaningless the connection between the order and the wrongful situation in evidence. Accordingly, the order may apply only to the institutions where the wrong was committed. The situation and the orders could be different if the evidence revealed a systemic problem in the body affecting all institutions.
3. The discretion of Court of Québec judges is limited by the evidence before them and the facts relating to the wrong committed against the child who is party to the matter. Courts of law are not commissions of inquiry.[[20]](#footnote-20) Inquiries are mandated to investigate and consider a broad range of general questions, whereas court proceedings take a microscopic approach to a given situation that is framed and even limited by the rules of relevancy.[[21]](#footnote-21) Proposing systemic changes based on the experience of and evidence relating to a single child is risky, unless the evidence demonstrates that the wrong results from, for example, a generalized practice or situation. A broadly applicable order could be made in such a situation. In some cases, the line between the two situations (specific to the child or generalized) is difficult to draw. Having said that, the financial impact of a measure on the DYP should not prevent the Court of Québec from making corrective orders allowed by the law and required by the case.
4. In this case, the first two orders made by the Court of Québec were correctly varied by the Superior Court judge. Given their potential application to all intervention units throughout Quebec, they were overbroad and did not relate directly to the child. Having been corrected by the Superior Court judge, they are now related to the child, offer a concrete remedy for her situation, and seek to prevent the recurrence of the wrong.
5. They were drafted as follows by the Superior Court:

[translation]

[340] **ORDERS** that the youth workers, counsellors, and intervention officers responsible for X in individualized treatment units receive specific training on mental health and report back to theCommission des droits de la personne et des droits de la jeunesse;

[341] **ORDERS** that the individualized treatment units responsible for X obtain support from a healthcare professional specializing in mental health and report back to the Commission des droits de la personne et des droits de la jeunesse;

1. However, the third and fourth orders of the Court of Québec judge must be restored (with a clarification).
2. The third order in question was worded as follows by the Court of Québec judge:

[translation]

[345] **ORDERS** that the Centre intégré de santé et de services A implement a protocol within a reasonable time period that sets out the steps to be taken when a child spits during an intervention and report back to the Commission des droits de la personne et des droits de la jeunesse;

1. The judge of the Superior Court changed it to the following:

[translation]

[345] **ORDERS** that Centre intégré de santé et de services A implement a protocol within a reasonable time period that sets out the steps to be taken when X spits during an intervention and report back to the Commission des droits de la personne et des droits de la jeunesse;

1. This interpretation of the *YPA* is too restrictive. The measure can be both corrective and remedial. In this case, the measure ordered by the Superior Court judge would not prevent the recurrence of the wrongful situation. A judge can order that a protocol be implemented when a wrongful situation is ongoing due to the lack of such a protocol. Moreover, it is neither logical nor reasonable for a protocol to be implemented to handle only situations when X spits. If the Superior Court’s order were to be upheld, could the protocol be completely set aside once X leaves the institution? In addition, how is it possible to predict which attendant will be present when the child spits?
2. This is a situation where distinguishing this child’s case from measures of general application becomes a semantic exercise that offers no possibility of proper application by the DYP. A general order is completely justified in the circumstances and I add that in this case, the measure relates to the child whose rights were wronged, even if her name is not included in the order.
3. The same can be said of the last order at issue. That order was initially drafted by the Court of Québec as follows:

[translation]

[346] **ORDERS** that the Centre intégré de santé et de services sociaux A adapt all its isolation rooms to be safer and that their walls be covered with a material that prevents injury.

1. The judge of the Superior Court amended it as follows to apply only to X:

[translation]

[346] **ORDERS** that the Centre intégré de santé et de services sociaux A adapt an isolation room to be safer for X and that its walls be covered with a material that prevents injury to X.

1. The order made by the Court of Québec judge should be restored, with the clarification that it applies to units B and A. This is consistent with the evidence. The judge visited the premises to better assess the evidence and to observe the state of the isolation rooms.[[22]](#footnote-22) She said they were small, with bare floors and concrete walls.[[23]](#footnote-23) On different occasions, the adolescent hit her head against the concrete walls.[[24]](#footnote-24) She was subject to over one hundred restraint measures and over one hundred isolation measures, lasting from less than one minute to more than seven hours.[[25]](#footnote-25) The judge came to the conclusion that the child [translation] “has spent an unreasonable amount of time isolated in a tiny, often dingy, concrete room”[[26]](#footnote-26) and quoted extracts[[27]](#footnote-27) from a study by the Commission des droits de la personne[[28]](#footnote-28) to support her conclusions in this respect. Isolation is an exceptional measure that should last only short periods of time. In addition, all isolation rooms in an institution must be safe. In this case, the Court of Québec judge was right to make a general order based on the adolescent’s experiences that applied to all the isolation units at issue. The order was justified to ensure that the adolescent concerned and other children did not harm themselves in the isolation rooms run by the Centre intégré de santé et de services sociaux A in units B (in City A) and A (in City B). Section 91 *YPA* provides for such jurisdiction when it refers to an “institution”. However, the order must be limited to what is established by the evidence; it may apply only to unit A in City B and unit B in City A, not to all institutions run by the Centre.
2. Another point requires clarification and, accordingly, a variation to the orders in paragraphs 345 and 346 of the Court of Québec’s judgment. Throughout the proceedings, the DYP (or her regional director, *ex officio*) was party to the proceedings, as set out in section 81 *YPA*. The Centre intégré de santé et de services sociaux A (the “Centre”) is a legal person established in the public interest. It is not formally party to the proceedings.[[29]](#footnote-29) It is therefore an error of law to make orders in its respect.
3. This point was not raised by the parties. The Court invited counsel to submit brief statements on this issue after the case had been taken under advisement. All the parties requested that the orders be maintained against the Centre. They argued that the DYP sits on the board of directors of the Centre and that its operations are intimately related to those of the DYP. Representatives for the Centre were heard before the Court of Québec and their lawyers represented the DYP in all the proceedings.
4. Given the principle that courts make orders against properly summoned parties, I find the parties’ arguments unconvincing.[[30]](#footnote-30) It is an error of law to make orders against a person who is not party to the matter. I add that the applicants in first instance did not seek leave of the Court to amend their application to add the Centre as a party, and the Centre did not seek leave to become party to this matter.
5. The DYP is responsible for carrying out court orders, as set out in section 92 *YPA*:

|  |  |
| --- | --- |
| 92. Where the tribunal orders the carrying out of a measure with regard to a child, it shall entrust the situation of the child to the director, who shall then see that the measure is carried out. | 92. Lorsque le tribunal ordonne l’exécution d’une mesure à l’égard d’un enfant, il confie la situation de l’enfant au directeur qui voit alors à l’exécution de la mesure. |
| Every institution and every educational body is required to take all available means to provide the services required to carry out the measures ordered. The same applies to every person and to every other body that agrees to apply such measures. | Tout établissement et tout organisme du milieu scolaire sont tenus de prendre tous les moyens à leur disposition pour fournir les services requis pour l’exécution des mesures ordonnées. Il en est de même des personnes et des autres organismes qui consentent à appliquer de telles mesures. |

Further, section 31.3 para. 1 *YPA* in part states the following:

|  |  |
| --- | --- |
| 31.3. The director must see to it that, within the institution operating a child and youth protection centre, practices are maintained and resources are allocated so as to enable the director to properly exercise his responsibilities.  … | 31.3. Le directeur doit veiller au maintien, au sein de l’établissement qui exploite un centre de protection de l’enfance et de la jeunesse, de pratiques et d’une allocation de ressources lui permettant d’exercer adéquatement ses responsabilités.  (…) |

1. Accordingly, and given the absence of proper justification for the current drafting, the orders in paragraphs 345 and 346 must be varied again so that they are directed against the DYP.

\* \* \*

1. For these reasons, I propose that the appeals be decided as follows:
2. **ALLOW** the appeals in part;
3. **SET ASIDE** in part the judgment of the Superior Court;
4. **RESTORE** in part the order made in paragraph 345 of the judgment of the Court of Québec so that it reads as follows:

[345] **ORDER** that the Director of Youth Protection take the necessary steps to ensure that the Centre intégré de santé et de services sociaux A implements a protocol within a reasonable time period that sets out the steps to be taken when a child spits during an intervention and reports back to the Commission des droits de la personne et des droits de la jeunesse;

1. **RESTORE** in part the order made in paragraph 346 of the judgment of the Court of Québec so that it reads as follows:

[346] **ORDER** that the Director of Youth Protection take the necessary steps to ensure that the Centre intégré de santé et de services sociaux A adapts all its isolation rooms in unit A in City B and unit B in City A to be safer and that the walls are covered with a material that prevents injury;

1. **THE WHOLE** without costs given the nature of the proceedings.

|  |  |
| --- | --- |
|  | |
|  |  |
| MARK SCHRAGER, J.A. |

**SCHEDULE**

***Youth Protection Act*, CQLR, c. P-34.1**

|  |  |
| --- | --- |
| **2.3.** Any intervention in respect of a child and the child’s parents under this Act | **2.3.** Toute intervention auprès d’un enfant et de ses parents en vertu de la présente loi doit: |
| (a) must be designed to put an end to and prevent the recurrence of a situation in which the security or the development of the child is in danger; and | 1. viser à mettre fin à la situation qui compromet la sécurité ou le développement de l’enfant et à éviter qu’elle ne se reproduise; |
| (b) must, if the circumstances are appropriate, favour the means that allow the child and the child’s parents to take an active part in making decisions and choosing measures that concern them. | 1. privilégier, lorsque les circonstances sont appropriées, les moyens qui permettent à l’enfant et à ses parents de participer activement à la prise de décision et au choix des mesures qui les concernent. |
| Every person, body or institution having responsibilities under this Act towards a child and the child’s parents must encourage the participation of the child and the parents, and the involvement of the community. | Une personne, un organisme ou un établissement à qui la présente loi confie des responsabilités envers l’enfant et ses parents doit favoriser la participation de l’enfant et de ses parents ainsi que l’implication de la communauté. |
| The parents must, whenever possible, take an active part in the application of the measures designed to put an end to and prevent the recurrence of the situation in which the security or development of their child is in danger. | Les parents doivent, dans la mesure du possible, participer activement à l’application des mesures pour mettre fin à la situation qui compromet la sécurité ou le développement de leur enfant et pour éviter qu’elle ne se reproduise. |
| **2.4.** Every person having responsibilities towards a child under this Act, and every person called upon to make decisions with respect to a child under this Act shall, in their interventions, take into account the necessity | **2.4.** Les personnes à qui la présente loi confie des responsabilités envers l’enfant ainsi que celles appelées à prendre des décisions à son sujet en vertu de cette loi tiennent compte, lors de leurs interventions, de la nécessité: |
| (1) of treating the child and the child’s parents with courtesy, fairness and understanding, and in a manner that respects their dignity and autonomy; | 1° de traiter l’enfant et ses parents avec courtoisie, équité et compréhension, dans le respect de leur dignité et de leur autonomie; |
| (2) of ensuring that any information or explanation that must be furnished to a child under this Act is presented in language appropriate to the child’s age and understanding; | 2° de s’assurer que les informations et les explications qui doivent être données à l’enfant dans le cadre de la présente loi doivent l’être en des termes adaptés à son âge et à sa compréhension; |
| (3) of ensuring that the parents have understood the information or explanations that must be furnished to them under this Act; | 3° de s’assurer que les parents ont compris les informations et les explications qui doivent leur être données dans le cadre de la présente loi; |
| (4) of giving the child and the child’s parents an opportunity to present their points of view, express their concerns and be heard at the appropriate time during the intervention; and | 4° de permettre à l’enfant et à ses parents de faire entendre leurs points de vue, d’exprimer leurs préoccupations et d’être écoutés au moment approprié de l’intervention; |
| (5) of opting for measures, in respect of the child and the child’s parents, which allow action to be taken diligently to ensure the child’s protection, considering that a child’s perception of time differs from that of adults, and which take into consideration the following factors: | 5° de favoriser des mesures auprès de l’enfant et de ses parents en prenant en considération qu’il faut agir avec diligence pour assurer la protection de l’enfant, compte tenu que la notion de temps chez l’enfant est différente de celle des adultes, ainsi qu’en prenant en considération les facteurs suivants: |
| (a) the proximity of the chosen resource; | a) la proximité de la ressource choisie; |
| (b) the characteristics of cultural communities; | b) les caractéristiques des communautés culturelles; |
| (c) the characteristics of Native communities, including Aboriginal customary tutorship and adoption. | c) les caractéristiques des communautés autochtones, notamment la tutelle et l’adoption coutumières autochtones. |
| **3.** Decisions made under this Act must be in the interest of the child and respect his rights. | **3.** Les décisions prises en vertu de la présente loi doivent l’être dans l’intérêt de l’enfant et dans le respect de ses droits. |
| In addition to the moral, intellectual, emotional and material needs of the child, his age, health, personality and family environment and the other aspects of his situation must be taken into account. In the case of a Native child, the preservation of the child’s cultural identity must also be taken into account. | Sont pris en considération, outre les besoins moraux, intellectuels, affectifs et physiques de l’enfant, son âge, sa santé, son caractère, son milieu familial et les autres aspects de sa situation. Dans le cas d’un enfant autochtone, est également prise en considération la préservation de son identité culturelle. |
| **8.** The child and the parents are entitled to receive, with continuity and in a personalized manner, health services and social services that are appropriate from a scientific, human and social standpoint, taking into account the legislative and regulatory provisions governing the organization and operation of the institution providing those services, as well as its human, material and financial resources. | **8.** L’enfant et ses parents ont le droit de recevoir des services de santé et des services sociaux adéquats sur les plans à la fois scientifique, humain et social, avec continuité et de façon personnalisée, en tenant compte des dispositions législatives et réglementaires relatives à l’organisation et au fonctionnement de l’établissement qui dispense ces services ainsi que des ressources humaines, matérielles et financières dont il dispose. |
| The child is also entitled to receive, on the same conditions, appropriate educational services from an educational body. | L’enfant a également le droit de recevoir, aux mêmes conditions, des services d’éducation adéquats d’un organisme du milieu scolaire. |
| Furthermore, the child and the parents are entitled to be supported and assisted by a person of their choice if they wish to obtain information or when meeting the director or any person the director authorizes. | De plus, l’enfant et ses parents ont le droit d’être accompagnés et assistés par une personne de leur choix lorsqu’ils désirent obtenir des informations ou lorsqu’ils rencontrent le directeur ou toute personne qu’il autorise. |
| **10.** Every disciplinary measure taken by an institution operating a rehabilitation centre in respect of a child must be taken in the child’s interest and in conformity with internal rules that must be approved by the board of directors and posted in a conspicuous place in the facilities of the institution. The institution must ensure that the rules are explained to the child and to the child’s parents. | **10.** Toute mesure disciplinaire prise par un établissement qui exploite un centre de réadaptation à l’égard d’un enfant doit l’être dans l’intérêt de celui-ci conformément à des règles internes qui doivent être approuvées par le conseil d’administration et affichées bien en vue à l’intérieur de ses installations. L’établissement doit s’assurer que ces règles sont expliquées à l’enfant de même qu’à ses parents. |
| A copy of the internal rules must be given to the child, if he is capable of understanding, and to the child’s parents. A copy of the rules must also be sent to the Commission, to the Minister of Health and Social Services, to the agency and to the institution operating the child and youth protection centre. | Une copie des règles internes doit être remise à l’enfant, s’il est en mesure de comprendre, de même qu’aux parents de l’enfant. Une copie de ces règles doit également être transmise à la Commission, au ministre de la Santé et des Services sociaux, à l’agence et à l’établissement qui exploite un centre de protection de l’enfance et de la jeunesse. |
| The measures provided for in section 118.1 of the Act respecting health services and social services (chapter S-4.2), in particular isolation, may never be used as disciplinary measures. The same applies to placement in an intensive supervision unit, as provided for in section 11.1.1 of this Act, and to a measure intended to prevent a child from leaving the facilities maintained by an institution operating a rehabilitation centre, as provided for in section 11.1.2 of this Act. | Les mesures, notamment l’isolement, prévues à l’article 118.1 de la Loi sur les services de santé et les services sociaux (chapitre S-4.2) ne peuvent jamais être utilisées à titre de mesure disciplinaire. Il en est de même de la mesure d’hébergement en unité d’encadrement intensif prévue à l’article 11.1.1 et de la mesure visant à empêcher un enfant de quitter les installations maintenues par un établissement qui exploite un centre de réadaptation prévue à l’article 11.1.2 de la présente loi. |
| **11.1.** Any child to whom foster care is provided by an institution under this Act shall be placed in premises appropriate to his needs and rights, taking into account the legislative and regulatory provisions governing the organization and operation of the institution and the human, material and financial resources at its disposal. | **11.1.** L’enfant, s’il est hébergé par un établissement en vertu de la présente loi, doit l’être dans un lieu approprié à ses besoins et au respect de ses droits, compte tenu des dispositions législatives et réglementaires relatives à l’organisation et au fonctionnement de l’établissement ainsi que des ressources humaines, matérielles et financières dont il dispose. |
| **81.** The child, the child’s parents and the director are parties to the hearing. | **81.** L’enfant, ses parents et le directeur sont des parties. |
| The Commission may, ex officio, intervene at the hearing as if it were a party to it. The same applies to the Public Curator in tutorship and emancipation matters. | La Commission peut, d’office, intervenir à l’instruction comme si elle y était partie. Il en est de même du curateur public en matière de tutelle et d’émancipation. |
| Any person who wishes to intervene at the hearing in the interest of the child may, on an application, testify before the tribunal and make representations if the person has information likely to enlighten the tribunal, and may, for that purpose, be assisted by an advocate. The tribunal may, for exceptional reasons, in urgent cases or if the parties present at the hearing consent to it, authorize the person to make the application orally. | Toute personne qui veut intervenir à l’instruction dans l’intérêt de l’enfant peut, sur demande, témoigner et présenter ses observations au tribunal si elle dispose d’informations susceptibles de renseigner ce dernier et elle peut, à ces fins, être assistée d’un avocat. Le tribunal peut, pour des motifs exceptionnels, en cas d’urgence ou si les parties présentes à l’audience y consentent, autoriser une personne à faire cette demande oralement. |
| For the requirements of the hearing, the tribunal may grant a person the status of party to the hearing if the tribunal considers it advisable to do so in the interest of the child. The status of party remains valid until withdrawn by a decision or order of the tribunal. | Le tribunal peut, pour les besoins de l’instruction, accorder le statut de partie à une personne, lorsqu’il le juge opportun dans l’intérêt de l’enfant. Ce statut demeure en vigueur jusqu’à la décision ou l’ordonnance du tribunal y mettant fin. |
| The director must, on request, inform a person who wishes to present an application under the third or fourth paragraph of the date, time and place of the hearing. | Le directeur doit, sur demande, informer une personne qui entend présenter une demande en vertu du troisième ou du quatrième alinéa de la date, de l’heure et du lieu de l’audience. |
| **91.** Where the tribunal concludes that the security or development of the child is in danger, it may, for the period it determines, order the implementation of one or more of the following measures: | **91.** Si le tribunal en vient à la conclusion que la sécurité ou le développement de l’enfant est compromis, il peut, pour la période qu’il détermine, ordonner l’exécution de l’une ou de plusieurs des mesures suivantes: |
| (a) that the child remain with his family or be entrusted to one of his parents and that the child’s parents report periodically to the director on the measures they apply in their own regard or in their child’s regard to put an end to the situation in which the security or development of the child is in danger; | 1. que l’enfant soit maintenu dans son milieu familial ou qu’il soit confié à l’un ou à l’autre de ses parents, et que les parents fassent rapport périodiquement au directeur sur les mesures qu’ils appliquent à eux-mêmes ou à leur enfant pour mettre fin à la situation qui compromet la sécurité ou le développement de l’enfant; |
| (b) that the child and the child’s parents take an active part in the application of any of the measures ordered by the tribunal; | 1. que l’enfant et ses parents participent activement à l’application de l’une ou l’autre des mesures qu’il ordonne; |
| (c) that certain persons designated by the tribunal not come into contact with the child; | c) que certaines personnes qu’il désigne n’entrent pas en contact avec l’enfant; |
| (d) that the child not come into contact with certain persons designated by the tribunal; | d) que l’enfant n’entre pas en contact avec certaines personnes qu’il désigne; |
| (e) that the child be entrusted to other persons; | e) que l’enfant soit confié à d’autres personnes; |
| (e.1) that the child be entrusted to a kinship foster family chosen by the institution operating a child and youth protection centre; | e.1) que l’enfant soit confié à une famille d’accueil de proximité choisie par l’établissement qui exploite le centre de protection de l’enfance et de la jeunesse; |
| (f) that a person working for an institution or body provide aid, counselling or assistance to the child and the child’s family; | f) qu’une personne qui travaille pour un établissement ou un organisme apporte aide, conseil ou assistance à l’enfant et à sa famille; |
| (g) that the child be entrusted to an institution operating a hospital centre or local community service centre or to another body so that he may receive the care and assistance he needs; | g) que l’enfant soit confié à un établissement qui exploite un centre hospitalier ou un centre local de services communautaires ou à un organisme afin qu’il y reçoive les soins et l’aide dont il a besoin; |
| (h) that the child or the child’s parents report in person, at regular intervals, to the director to inform him of the current situation; | h) que l’enfant ou ses parents se présentent à intervalles réguliers chez le directeur pour lui faire part de l’évolution de la situation; |
| (i) that the child receive specific health care and health services; | 1. que l’enfant reçoive certains soins et services de santé; |
| (j) that the child be entrusted to an institution operating a rehabilitation centre or to a foster family, chosen by the institution operating a child and youth protection centre; | j) que l’enfant soit confié à un établissement qui exploite un centre de réadaptation ou à une famille d’accueil, choisi par l’établissement qui exploite le centre de protection de l’enfance et de la jeunesse; |
| (k) that the child attend a school or another place of learning or participates in a program geared to developing skills and autonomy; | k) que l’enfant fréquente un milieu scolaire ou un autre milieu d’apprentissage ou qu’il participe à un programme visant l’apprentissage et l’autonomie; |
| (l) that the child attend a childcare establishment; | l) que l’enfant fréquente un milieu de garde; |
| (l.1) that specific information not be disclosed to one or both of the parents or any other person designated by the tribunal; | l.1) que certains renseignements ne soient pas divulgués aux parents ou à l’un d’eux ou à toute autre personne qu’il désigne; |
| (m) that a person ensure that the child and his parents comply with the conditions imposed on them and that that person periodically report to the director; | m) qu’une personne s’assure que l’enfant et ses parents respectent les conditions qui leur sont imposées et fasse rapport périodiquement au directeur; |
| (n) that the exercise of certain attributes of parental authority be withdrawn from the parents and granted to the director or any other person designated by the tribunal; | n) que l’exercice de certains attributs de l’autorité parentale soit retiré aux parents et qu’il soit confié au directeur ou à toute autre personne que le tribunal aura désignée; |
| (o) that a period over which the child will be gradually returned to his family or social environment be determined. | o) qu’une période de retour progressif de l’enfant dans son milieu familial ou social soit fixée. |
| The tribunal may make any recommendation it considers to be in the interest of the child. | Le tribunal peut faire toute recommandation qu’il estime dans l’intérêt de l’enfant. |
| The tribunal may include several measures in the same order, provided those measures are consistent with each other and in the interest of the child. It may thus authorize that personal relations between the child and the child’s parents, grandparents or another person be maintained, in the manner determined by the tribunal; it may also provide for more than one environment to which the child may be entrusted and state how long the child is to stay in each of those environments. | Le tribunal peut ordonner plusieurs mesures dans une même ordonnance, en autant que ces mesures ne soient pas incompatibles les unes avec les autres et qu’elles soient ordonnées dans l’intérêt de l’enfant. Il peut ainsi, dans son ordonnance, autoriser le maintien des relations personnelles de l’enfant avec ses parents, ses grands-parents ou une autre personne, selon les modalités qu’il détermine; il peut également prévoir plus d’un milieu auquel l’enfant sera confié et indiquer les périodes de temps pendant lesquelles l’enfant doit demeurer confié à chacun de ces milieux. |
| Where the tribunal concludes that the rights of a child in difficulty have been wronged by persons, bodies or institutions, it may order the situation to be corrected. | Si le tribunal en vient à la conclusion que les droits d’un enfant en difficulté ont été lésés par des personnes, des organismes ou des établissements, il peut ordonner que soit corrigée la situation. |

|  |
| --- |
|  |
|  |
| REASONS OF HOGUE, J.A. |
|  |
|  |

1. I have had the benefit of reading the reasons of my colleague Schrager J.A. With all due respect, I cannot entirely agree with them.
2. I agree with his presentation of the facts and the standard of review that he identifies, but I do not agree that the Court of Québec judge had the power to make the contested orders and that, as a result, the Superior Court judge erred in varying them.
3. It is true, as he noted, that the *Youth Protection Act* (the “*YPA*)” is remedial legislation that, as such, must receive a large and liberal interpretation,[[31]](#footnote-31) but in my opinion, this is not sufficient to interpret section 91 *in fine* as permitting a judge to make general orders that would require institutions or public bodies to develop or transform spaces and assume the cost thereof.
4. Let me explain.
5. As we know, Quebec’s system consists of three branches: the legislative, the executive, and the judiciary. As Karakatsanis J. so aptly wrote about the Canadian system in *Criminal Lawyers’ Association of Ontario*:[[32]](#footnote-32) “The legislative branch makes policy choices, adopts laws and holds the purse strings of government, as only it can authorize the spending of public funds. The executive implements and administers those policy choices and laws with the assistance of a professional public service. The judiciary maintains the rule of law, by interpreting and applying these laws through the independent and impartial adjudication of references and disputes, and protects the fundamental liberties and freedoms guaranteed under the *Charter*”.
6. In principle, only the first two branches are responsible for deciding in what way and to what end public funds will be used. These funds are not unlimited and, as a result, priorities must be established and choices must be made. The government must also account for these choices to its citizens.
7. In our political system, there is a principle that a court may order the State or its agencies to allocate public funds for a specific purpose only if it is authorized to do so by a law or if such authorization stems from a constitutional challenge.[[33]](#footnote-33) In my opinion, only a clear and explicit legal rule can form the basis for such a power, and section 91 *in* fine of the *YPA* does not constitute such a rule. As a reminder, that provision states:

|  |  |
| --- | --- |
| [**91.**](javascript:displayOtherLang(%22se:91%22);) Where the tribunal concludes that the security or development of the child is in danger, it may, for the period it determines, order the implementation of one or more of the following measures:   1. that the child remain with his family or be entrusted to one of his parents and that the child’s parents report periodically to the director on the measures they apply in their own regard or in their child’s regard to put an end to the situation in which the security or development of the child is in danger;   (*b*) that the child and the child’s parents take an active part in the application of any of the measures ordered by the tribunal;  (*c*) that certain persons designated by the tribunal not come into contact with the child;  (*d*) that the child not come into contact with certain persons designated by the tribunal;  (*e*) that the child be entrusted to other persons;  (*e*.1) that the child be entrusted to a kinship foster family chosen by the institution operating a child and youth protection centre;  (*f*) that a person working for an institution or body provide aid, counselling or assistance to the child and the child’s family;  (*g*) that the child be entrusted to an institution operating a hospital centre or local community service centre or to another body so that he may receive the care and assistance he needs;  (*h*) that the child or the child’s parents report in person, at regular intervals, to the director to inform him of the current situation;  (*i*) that the child receive specific health care and health services;  (*j*) that the child be entrusted to an institution operating a rehabilitation centre or to a foster family, chosen by the institution operating a child and youth protection centre;  (*k*) that the child attend a school or another place of learning or participates in a program geared to developing skills and autonomy;  (*l*) that the child attend a childcare establishment;  (*l*.1) that specific information not be disclosed to one or both of the parents or any other person designated by the tribunal;  (*m*) that a person ensure that the child and his parents comply with the  conditions imposed on them and that that person periodically report to the director;  (*n*) that the exercise of certain attributes of parental authority be withdrawn from the parents and granted to the director or any other person designated by the tribunal;  (*o*) that a period over which the child will be gradually returned to his family or social environment be determined.  The tribunal may make any recommendation it considers to be in the interest of the child.  The tribunal may include several measures in the same order, provided those measures are consistent with each other and in the interest of the child. It may thus authorize that personal relations between the child and the child’s parents, grandparents or another person be maintained, in the manner determined by the tribunal; it may also provide for more than one environment to which the child may be entrusted and state how long the child is to stay in each of those environments. | [**91.**](javascript:displayOtherLang(%22se:91%22);) Si le tribunal en vient à la conclusion que la sécurité ou le développement de l’enfant est compromis, il peut, pour la période qu’il détermine, ordonner l’exécution de l’une ou de plusieurs des mesures suivantes :  *a*) que l’enfant soit maintenu dans son milieu familial ou qu’il soit confié à l’un ou à l’autre de ses parents, et que les parents fassent rapport périodiquement au directeur sur les mesures qu’ils appliquent à eux-mêmes ou à leur enfant pour mettre fin à la situation qui compromet la sécurité ou le développement de l’enfant;  *b*) que l’enfant et ses parents participent activement à l’application de l’une ou l’autre des mesures qu’il ordonne;  *c*) que certaines personnes qu’il désigne n’entrent pas en contact avec l’enfant;  *d*) que l’enfant n’entre pas en contact avec certaines personnes qu’il désigne;  *e*) que l’enfant soit confié à d’autres personnes;  *e*.1) que l’enfant soit confié à une famille d’accueil de proximité choisie par l’établissement qui exploite le centre de protection de l’enfance et de la jeunesse;  *f*) qu’une personne qui travaille pour un établissement ou un organisme apporte aide, conseil ou assistance à l’enfant et à sa famille;  *g*) que l’enfant soit confié à un établissement qui exploite un centre hospitalier ou un centre local de services communautaires ou à un organisme afin qu’il y reçoive les soins et l’aide dont il a besoin;  *h*) que l’enfant ou ses parents se présentent à intervalles réguliers chez le directeur pour lui faire part de l’évolution de la situation;  *i*) que l’enfant reçoive certains soins et services de santé;  *j*) que l’enfant soit confié à un établissement qui exploite un centre de réadaptation ou à une famille d’accueil, choisi par l’établissement qui exploite le centre de protection de l’enfance et de la jeunesse;  *k*) que l’enfant fréquente un milieu scolaire ou un autre milieu d’apprentissage ou qu’il participe à un programme visant l’apprentissage et l’autonomie;  *l*) que l’enfant fréquente un milieu de garde;  *l*.1) que certains renseignements ne soient pas divulgués aux parents ou à l’un d’eux ou à toute autre personne qu’il désigne;  *m*) qu’une personne s’assure que l’enfant et ses parents respectent les  conditions qui leur sont imposées et fasse rapport périodiquement au directeur;  *n*) que l’exercice de certains attributs de l’autorité parentale soit retiré aux parents et qu’il soit confié au directeur ou à toute autre personne que le tribunal aura désignée;  *o*) qu’une période de retour progressif de l’enfant dans son milieu familial ou social soit fixée.  Le tribunal peut faire toute recommandation qu’il estime dans l’intérêt de l’enfant.  Le tribunal peut ordonner plusieurs mesures dans une même ordonnance, en autant que ces mesures ne soient pas incompatibles les unes avec les autres et qu’elles soient ordonnées dans l’intérêt de l’enfant. Il peut ainsi, dans son ordonnance, autoriser le maintien des relations personnelles de l’enfant avec ses parents, ses grands-parents ou une autre personne, selon les modalités qu’il détermine; il peut également prévoir plus d’un milieu auquel l’enfant sera confié et indiquer les périodes de temps pendant lesquelles l’enfant doit demeurer confié à chacun de ces milieux. |
| Where the tribunal concludes that the rights of a child in difficulty have been wronged by persons, bodies or institutions, it may order the situation to be corrected. | Si le tribunal en vient à la conclusion que les droits d’un enfant en difficulté ont été lésés par des personnes, des organismes ou des établissements, il peut ordonner que soit corrigée la situation. |

[Emphasis added]

1. As we can see, the wording is far from precise, since it merely grants the judge seized of the situation of a child whose security or development is in danger the power to order the correction of a situation that has led to the child’s rights being wronged. The legislation does not set out the specific measures that may be imposed, nor those that may be the subject of an order. The provision merely states that an order may be made when the rights of the child have been wronged by “persons, bodies or institutions”.
2. The case law is of no help, as there is so little of it. Few orders of this nature have been made by the Youth Division of the Court of Québec, and the measures imposed in the rare decisions released yearly vary considerably. Moreover, the higher courts have rarely been called upon to review such orders, even though section 100 *YPA* confers a right to appeal to the Superior Court, and section 115 *YPA* provides for the possibility of bringing a question of law before the Court of Appeal.
3. Having said that, certain principles have nevertheless been established, in particular in *Protection de la jeunesse — 123979*, where, as my colleague Schrager J.A. points out, the Court considered this power. Whether section 91 *in fine* allows a court to order institutions or public bodies to take measures that require assigning a portion of their available funds to a specific purpose was not addressed, however.
4. In my opinion, it does not.
5. As we are aware, institutions in the health and social services network, including rehabilitation centres intended for youth protection, must meet a tremendous need. They have limited resources and face difficult choices. The funds they use for one purpose are funds that are unavailable for other purposes. Determining how financial resources will be allocated requires in-depth knowledge of the system and its challenges.
6. The *YPA* accounts for this reality when it specifies that the right of children and their parents to health and social services must take into account the material and financial resources available to the institution, and confers on the directors of each institution the duty to allocate resources in a manner that enables them to properly exercise their responsibilities:

|  |  |
| --- | --- |
| **8.** The child and the parents are entitled to receive, with continuity, in a personalized manner and with the required intensity, health services and social services that are appropriate from a scientific, human and social standpoint, taking into account the legislative and regulatory provisions governing the organization and operation of the institution providing those services, as well as its human, material and financial resources. | **8.** L’enfant et ses parents ont le droit de recevoir des services de santé et des services sociaux adéquats sur les plans à la fois scientifique, humain et social, avec continuité et de façon personnalisée, en tenant compte des dispositions législatives et réglementaires relatives à l’organisation et au fonctionnement de l’établissement qui dispense ces services ainsi que des ressources humaines, matérielles et financières dont il dispose. |
| **31.3.** The director must see to it that, within the institution operating a child and youth protection centre, practices are maintained and resources are allocated so as to enable the director to properly exercise his responsibilities.  The board of directors of an institution shall, on a quarterly basis, hear the director on the exercise of his responsibilities and the operation of the child and youth protection centre. | **31.3.** Le directeur doit veiller au maintien, au sein de l’établissement qui exploite un centre de protection de l’enfance et de la jeunesse, de pratiques et d’une allocation des ressources lui permettant d’exercer adéquatement ses responsabilités.  Le conseil d’administration de l’établissement doit, chaque trimestre, entendre le directeur afin qu’il lui fasse état de l’exercice de ses responsabilités et du fonctionnement du centre de protection de l’enfance et de la jeunesse. |

1. The legislation creates a structure intended to protect children and establishes two levels of review mechanisms to do so: social and legal. Chapter II of the *Act* sets out general principles, the rights of the child and his or her parents, and the parents’ responsibilities; Chapter III sets out the responsibilities of bodies and persons entrusted with youth protection; Chapter IV governs social intervention; and, Chapter V sets out the circumstances in which courts may or must intervene. In Chapter V, sections 74.1 and 74.2 determine who may seize the courts and on what subject:

|  |  |
| --- | --- |
| [**74.1.**](javascript:displayOtherLang(%22se:74_1%22);) The director or the Commission may refer to the tribunal the case of a child whose security or development is considered to be in danger.  The Commission may also refer to the tribunal any situation where it has reason to believe that the rights of the child have been wronged by persons, bodies or institutions.  [**74.2.**](javascript:displayOtherLang(%22se:74_2%22);) A child or his parents may apply to the tribunal where they disagree with  (*a*) the decision of the director as to whether or not the security or development of the child is in danger;  (*b*) the decision of the director as to the directing of the child;  (*c*) the decision whether or not to prolong the period of a voluntary measure entrusting the child to an alternative living environment;  (*d*) the decision of the director on review;  (*e*) the decision of the executive director, in accordance with section 9, 11.1.1 or 11.1.2. | [**74.1.**](javascript:displayOtherLang(%22se:74_1%22);) Le directeur ou la Commission peut saisir le tribunal du cas d’un enfant dont la sécurité ou le développement est considéré comme compromis.  La Commission peut également saisir le tribunal de toute situation où elle a raison de croire que les droits de l’enfant ont été lésés par des personnes, des organismes ou des établissements.  [**74.2.**](javascript:displayOtherLang(%22se:74_2%22);) Un enfant ou ses parents peuvent saisir le tribunal lorsqu’ils ne sont pas d’accord avec :  *a*) la décision du directeur à l’effet que la sécurité ou le développement de l’enfant est compromis ou non;  *b*) la décision du directeur quant à l’orientation de l’enfant;  *c*) la décision de prolonger ou non la durée d’une mesure volontaire confiant l’enfant à un milieu de vie substitut;  *d*) la décision du directeur lors d’une révision;  *e*) la décision du directeur général, conformément *aux* articles 9, 11.1.1 ou 11.1.2. |

1. When taken as a whole, the provisions of the *Act* show that court intervention must always concern a specific child and that there is no general power of intervention or review of the decisions that institutions or bodies are required to make about their operations, organization, or premises.
2. Nevertheless, I recognize that a judge seized with the situation of a child may order that a measure be taken in connection with that child’s situation, even if it incidentally involves some expense or reorganization for the institution or body. To conclude otherwise would sterilize section 91 *in fine* almost entirely. I am of the opinion, however, that the measure a court orders must be limited to that which is necessary to correct the situation or prevent its recurrence with respect to that child in particular. Other children may also benefit from the measure, and that is positive, but it must be intended in the first place to correct the situation of the child affected by the case before the court. In this regard, I refer to the statements of my colleague Bouchard J.A. who, in *Protection de la jeunesse — 123979*,[[34]](#footnote-34)concluded that any measures ordered must be for the benefit of the child whose rights were wronged because the court is seized only of that child’s situation:

[translation]

[24] Where I see a problem, however, is in the conclusions of the Court of Québec judge, where he also recommends that the respondent withdraw from the file and that someone else take charge of the children. Let me explain.

[25] In my opinion, the remedy contemplated at section 91 *in fine* must be related to the child whose rights were wronged. Reading this provision as a whole, it is obvious that the court has the case of a child before it. Decisions made under this law must be in the child’s interests and take into account all aspects of his or her situation. Section 73.1 of the *Act* even requires the court to issue separate orders for each child. Consequently, when the court finds that the rights of a child in difficulty have been wronged and orders that the situation be remedied, it may address only the situation of that child. Therefore, if the Director of Youth Protection were to follow the judge’s recommendation and remove the youth worker from the case of the respondent’s children, I do not see how requiring the worker to take training would be an adequate remedial measure for the children in question. The remedy set out in section 91 *in fine* must be a concrete remedy for the wrong.

1. Therefore, in my opinion, with section 91 *in fine*, the legislaturehas conferred on the courts the power to make orders designed to correct the wrongful situation in which the child is placed but not to interfere in the management of the human, material, or financial resources of the network’s institutions and bodies. Any order made by a court must be sufficient to stop the child’s wrongful situation from continuing or from recurring, but must no go beyond that which is necessary or interfere in the management of the resources available to the institutions or bodies concerned.
2. I therefore find that some of the orders made by the Youth Division of the Court of Québec in this case exceeded what is permitted because they were general in nature. The Superior Court was correct to restrict their application only to X.
3. The initial orders were drafted as follows:

[translation]

[340] **ORDERS** that the youth workers, counsellor, and intervention officers who work in individualized treatment units receive specific training on mental health and report back to the Commission des droits de la personne et des droits de la jeunesse;

[341] **ORDERS** that the individualized treatment units obtain support from a healthcare professional specializing in mental health and report back to the Commission des droits de la personne et des droits de la jeunesse;

…

[345] **ORDERS** that the Centre intégré de santé et de services A implement a protocol within a reasonable time period that sets out the steps to be taken when a child spits during an intervention and report back to the Commission des droits de la personne et des droits de la jeunesse;

[346] **ORDERS** that the Centre intégré de santé et de services sociaux A adapt all its isolation rooms to be safer and that their walls be covered with a material that prevents injury.

The Superior Court amended the orders to read as follows:

[340] **ORDERS** that the youth workers, counsellors, and intervention officers responsible for X in individualized treatment units receive specific training on mental health and report back to theCommission des droits de la personne et des droits de la jeunesse;

[341] **ORDERS** that the individualized treatment units responsible for X obtain support from a healthcare professional specializing in mental health and report back to the Commission des droits de la personne et des droits de la jeunesse;

…

[345] **ORDERS** that the Centre intégré de santé et de services A implement a protocol within a reasonable time period that sets out the steps to be taken when X spits during an intervention and report back to the Commission des droits de la personne et des droits de la jeunesse;

[346] **ORDERS** that the Centre intégré de santé et de services sociaux A adapt an isolation room to be safer for X and that its walls be covered with a material that prevents injury to X.

[Emphasis added]

1. The initial orders went beyond X’s situation and, as such, were overbroad. The Superior Court judge restricted them, correctly in my view. It is true that some measures to be implemented for X’s benefit are likely to benefit other children, but this does not change the fact that the orders were made to avoid another situation in which X would find her rights wronged, as permitted by section 91 *in fine* YPA.
2. That being said, the validity of the order requiring the institution to adapt an isolation room could have been examined. As the record does not indicate what such work might involve, the Court cannot determine whether the costs can be characterized as incidental, in which case the order as worded is valid, or whether it constituted interference in the management of the institution’s available financial and material resources. Since the Director did not contest this order, I find that there is no basis for the Court to consider it in greater depth at this time. Nevertheless, I highlight the importance of raising the issue of approximate costs for those seeking or contesting such orders so that the court hearing such applications may assess the impact of the order and, accordingly, whether the court is allowed to make it.
3. Finally, I agree with my colleague Schrager J.A. when he explains in paragraphs [50] and following why the orders cannot be made against the Centre intégré de santé et de services sociaux A. I also find the explanations provided by counsel justifying their absence to be insufficient and that the orders must therefore be amended to be made against the DYP.
4. I suggest that the Court allow the appeals in part, but only to ensure that the orders are made against the DYP, all without costs given the nature of the proceedings.

|  |  |
| --- | --- |
|  | |
|  |  |
| MARIE-JOSÉE HOGUE, J.A. |

1. *Protection de la jeunesse — 212644*, 2021 QCCS 2251 [judgment under appeal]. [↑](#footnote-ref-1)
2. *Protection de la jeunesse — 193763*, 2019 QCCQ 3916. [↑](#footnote-ref-2)
3. *Youth Protection Act*, CQLR, c. P-34.1 [*YPA*]. [↑](#footnote-ref-3)
4. Judgment under appeal, *supra* note 1 at para. 35. [↑](#footnote-ref-4)
5. Judgment under appeal, *supra* note 1 at para. 47. [↑](#footnote-ref-5)
6. Judgment under appeal, *supra* note 1 at paras. 47–48, 50. [↑](#footnote-ref-6)
7. *Protection de la jeunesse — 123979*, 2012 QCCA 1483. [↑](#footnote-ref-7)
8. Judgment under appeal, *supra* note 1 at para. 58. [↑](#footnote-ref-8)
9. Judgment under appeal, *supra* note 1 at para. 61. [↑](#footnote-ref-9)
10. *Protection de la jeunesse — 123979*, 2012 QCCA 1483. [↑](#footnote-ref-10)
11. Frédéric Bachand, “Le traitement en appel des questions de fait” (2007) 86:1 *Can Bar Rev* 97 at 114–115. [↑](#footnote-ref-11)
12. *Protection de la jeunesse — 123979*, 2012 QCCA 1483 at para. 11. [↑](#footnote-ref-12)
13. *Protection de la jeunesse — 123979*, 2012 QCCA 1483 at para. 11; *Protection de la jeunesse — 1811298*, 2018 QCCS 6021 at para. 114; *Protection de la jeunesse — 176988*, 2017 QCCQ 12349 at para. 71; *Protection de la jeunesse — 187856*, 2018 QCCQ 8376 at paras. 152–153, 155, 174–175; *Protection de la jeunesse — 191256*, 2019 QCCQ 1756 at paras. 78, 281, 282, 283, 285; *Protection de la jeunesse — 196692*, 2019 QCCQ 6029 at para. 345; *Protection de la jeunesse — 186443*, 2018 QCCQ 6830 at para. 207. [↑](#footnote-ref-13)
14. *Interpretation Act*, CQLR, c. I-16. [↑](#footnote-ref-14)
15. *Protection de la jeunesse — 123979*, 2012 QCCA 1483 at para. 22. [↑](#footnote-ref-15)
16. *Interpretation Act*, CQLR, c. I-16., s. 41 para. 2. [↑](#footnote-ref-16)
17. *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559 at para. 26. [↑](#footnote-ref-17)
18. See Sophie Papillon, “Le jugement en matière de lésion de droits de la Chambre de la jeunesse : où en sommes-nous?” (2015) 56:2 *Les Cahiers de droit* 151 at 180. [↑](#footnote-ref-18)
19. Judgment under appeal, *supra* note 1 at para. 61. [↑](#footnote-ref-19)
20. *Option Consommateurs c. Novopharm Ltd.*, 2008 QCCA 949 at para. 50; *Association des policiers provinciaux du Québec c. Poitras*, 1997 R.J.Q. 1860, 1997 CanLII 10813 (QC CA). [↑](#footnote-ref-20)
21. *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System)*, [1997] 3 S.C.R. 440 at para. 37. [↑](#footnote-ref-21)
22. *Protection de la jeunesse — 193763*, 2019 QCCQ 3916 at para. 12. [↑](#footnote-ref-22)
23. *Protection de la jeunesse — 193763*, 2019 QCCQ 3916 at para. 184. [↑](#footnote-ref-23)
24. *Protection de la jeunesse — 193763*, 2019 QCCQ 3916 at para. 194. [↑](#footnote-ref-24)
25. *Protection de la jeunesse — 193763*, 2019 QCCQ 3916 at paras. 189–190. [↑](#footnote-ref-25)
26. *Protection de la jeunesse — 193763*, 2019 QCCQ 3916 at para. 302. [↑](#footnote-ref-26)
27. *Protection de la jeunesse — 193763*, 2019 QCCQ 3916 at paras. 295–298. [↑](#footnote-ref-27)
28. Véronique Noël & Sophie Papillon, *Étude sur l’utilisation de l’isolement et de la contention au sein des missions réadaptation jeunesse des CISSS et CIUSSS du Québec, ainsi que dans certains établissements non fusionnés*, Commission des droits de la personne et des droits de la jeunesse, May 2017. [↑](#footnote-ref-28)
29. *Act respecting health services and social services*, CQLR, c. S-4.2, s. 320; *An Act to modify the organization and governance of the health and social services network, in particular by abolishing the regional agencies*, SQ 2015, c. 1, s. 3. [↑](#footnote-ref-29)
30. Article 17 CCP*.* [↑](#footnote-ref-30)
31. *Protection de la jeunesse – 123979*, 2012 QCCA 1483. [↑](#footnote-ref-31)
32. *Ontario v. Criminal Lawyers Association of Ontario*, 2013 SCC 43. [↑](#footnote-ref-32)
33. *Ontario v. Criminal Lawyers Association of Ontario*, 2013 SCC 43. [↑](#footnote-ref-33)
34. *Protection de la jeunesse — 123979*, 2012 QCCA 1483. [↑](#footnote-ref-34)