



# “Building a Person”: Legal and Clinical Personhood for Autistic and Trans Children in Ontario

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## Abstract

In the 1960s and 1970s, psychologists at the University of California, Los Angeles, operated two behaviour modification programs: one aiming to eliminate “feminine” behaviours in male-bodied children (“conversion therapy”), and one targeting autistic children’s so-called problem behaviours (applied behavioural analysis or ABA). The head of the autism program referred to his work as “building a person.” Decades later in Ontario, a radically incommensurate legal context sees conversion therapy banned while ABA receives millions of funding dollars. Drawing on legislation, case law, media, and clinical literature, I argue that the process of trans communities wresting themselves out from under conversion therapy involved discursively shifting from *having* a condition to *being* human—a process of “building a person”—still incomplete for autistic communities. While legal reforms protect some trans youth from harmful therapies, this does not extend to autistic trans youth, leading us to question at whose expense a rights-bearing trans person was built.

**Keywords:** critical disability studies, youth, conversion therapy, autism, applied behaviour analysis, transgender

## Résumé

Dans les années 1960 et 1970, des psychologues de l’Université de Californie à Los Angeles ont mis en œuvre deux programmes de modification du comportement, le

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premier visant à éliminer les comportements « féminins » chez les enfants nés dans un corps masculin (« thérapie de conversion ») et le second ciblant les comportements qualifiés de problématiques des enfants autistes (analyse comportementale appliquée ou ABA). Le directeur du programme sur l'autisme a qualifié son travail de « construction d'une personne ». Des décennies plus tard en Ontario, dans un contexte juridique radicalement disproportionné par rapport aux deux situations, la thérapie de conversion est interdite tandis que l'ABA reçoit des millions de dollars de financement. En m'appuyant sur la législation, la jurisprudence, les médias et la littérature clinique, je soutiens que les communautés trans ont réussi à s'affranchir des thérapies de conversion en passant discursivement d'une personne souffrant d'une condition à une personne reconnue comme un être humain – un processus de « construction d'une personne » – encore inachevé auprès des communautés autistes. De ce fait, si les réformes juridiques protègent certains jeunes trans contre les thérapies néfastes, elles ne s'étendent pas aux jeunes trans autistes, ce qui soulève la question suivante : au détriment de qui une personne trans titulaire de droits a-t-elle été construite?

**Mots clés :** études critiques sur le handicap, enfants, jeunesse, thérapie de conversion, autisme, analyse appliquée du comportement, transgenre

At the University of California, Los Angeles (UCLA), in the 1960s and 1970s, psychologists operated two child behaviour modification programs side-by-side: one aimed at eliminating behaviours deemed “feminine” in male-bodied children (conversion therapy)<sup>1</sup> and one targeting so-called problem behaviours among autistic<sup>2</sup> children (now known as applied behaviour analysis or ABA). The clinical head of the autism treatment, O. Ivar Lovaas, referred to his work as “building a person” (Chance 1974, 76). Though the treatment of autistic children was markedly more brutal, both programs shared one vision—to make the children “indistinguishable” from others (Lovaas 1987, 8; Rekers and Lovaas 1974, 186). Decades later, these treatments exist in radically incommensurate legal contexts. In Ontario, lesbian, gay, bisexual, transgender (LGBT) conversion therapy was banned for minors in 2015,<sup>3</sup> while the following year, ABA received \$333 million in government funding (Ontario 2016). Indeed, all ABA-related legal challenges in Ontario to date have sought to compel *more* rather than *less* behaviour modification. While many autistic self-advocates refer to ABA as “autistic conversion therapy” and demand it be seen in the same immoral light (Sequenzia 2016), ABA is not only legal, but legally mandated for provision in some educational settings (Ontario Ministry of Education 2007).

This article explores the diverging threads of dehumanization underpinning two similar clinical treatments with dissimilar legal realities. Drawing on legislation, clinical literature, and media texts, I argue that the process of Ontario queer

<sup>1</sup> “Conversion therapy” once referred only to religious efforts to change sexual orientation but now commonly encompasses any treatment with an a priori goal for a child’s gender or sexual expression (AACAP 2018).

<sup>2</sup> I use “autistic person” rather than “person with autism” at the request of autistic community members (Sinclair 1999).

<sup>3</sup> Bill 77, *Affirming Sexual Orientation and Gender Identity Act*, OLA 2015, Parliament 41 Session 1.

and trans communities wresting themselves out from under conversion therapy involved discursively shifting from *having* a condition to *being* a human—a process of “building a person.” While trans depathologization is now often seen as an unquestioned good, this remains worthy of critical analysis, as the affirmation of personhood for some can rely on the disaffirmation of others. A review of changing clinical opinion, public opinion, and legal opinion regarding conversion therapy points to ableism as the active ingredient in the pathologization of trans identity. I argue that while Ontario law now addresses both the gender spectrum and the autism spectrum, it is the spectrum of personhood—gradations of perceived humanity—that matters most to one’s treatment in the world. While trans-positive legal reforms such as Ontario Bill 77 may protect some trans youth from harm, this protection does not extend to autistic trans youth, leading us to question at whose expense a rights-bearing trans person has been built.

### **Thinking Autism and Transgender Together**

Autism and transgender come together in intriguing ways. Both autistic and trans people face historic and current medicalization, with ongoing and hotly debated rewrites of their psychiatric diagnoses occurring over time (APA 2013). Both communities face levels of public and private violence extreme enough to raise questions about whether autistic and trans people are always viewed as human (see McGuire 2016; Mealer 2019). The parents of both autistic and trans children have at times claimed to be in mourning after learning of their child’s diagnosis, raising questions about whether autistic and trans people are always viewed as being alive (see Moss 2014; Sinclair 1999). Both communities host accelerating social movements where the concepts of gender diversity and neurodiversity signal complex debates about identity, passing, and pride. Scholars in trans studies and critical disability studies (see Goodley 2016; Snorton 2017), both draw on postcolonial theorists such as Sylvia Wynter to assert that racist classifications dictate the extent to which one can be considered human, in particular those who reside on the “underside of the category” (McKittrick 2015).

Important work has emerged in recent years by individuals who are both autistic and trans, with research indicating a significant overlap (Adams and Liang 2020; Brown 2016; Gratton 2019; Sparrow 2020). My analysis here, however, focuses on the shared history of dehumanizing therapies that have dogged both groups for decades—conversion therapy for queer and trans children and ABA for autistic children. Elsewhere, disability studies scholars have noted the co-development of these therapies by the same clinicians,<sup>4</sup> in the same UCLA psychology department at the same time (Dawson 2004; Gibson and Douglas 2018; McGuire 2016; Silberman 2015; Yergeau 2018). I build on this work by analyzing how efforts to depathologize first gay and then trans identity have relied on explicit ableism in some moments, and in other moments on the building of a type of personhood denied to autistic communities. Ontario’s legal context provides a

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<sup>4</sup> Conversion therapies were developed in several clinical settings in this era. O. Ivar Lovaas and UCLA psychology colleagues developed “behaviour” approaches.

unique setting for studying the contrast between trans and autistic representations of personhood due to the province's recent ban on conversion therapies for LGBT minors—which coincided with the simultaneous increase in public investment for *more* behaviour treatment for autistic children. I argue that the discursive disparity between *having* versus *being* (having a condition versus being a person) both produces and is produced by this differential treatment. As argued by Brown (2016), I call for a re-focus on the ableism within trans-depathologization arguments and for the unequivocal support of autistic communities as they confront the abuses they face. First, I outline the history of debates surrounding ABA and LGBT conversion therapies.

### The Human in Applied Behaviour Analysis (ABA)

Applied behaviour analysis is currently the most widely available and common state-funded form of autism therapy in Canada and the United States<sup>5</sup> (Gruson-Wood 2018; Wilkenfeld and McCarthy 2020). Based on the principles of operant conditioning,<sup>6</sup> ABA uses behaviour modification techniques with young children to eliminate behaviours deemed undesirable (Nadesan 2005). According to the Ontario Ministry of Education (2007), ABA involves defining and recording “problematic” behaviours, as well as analyzing the “antecedents” and “reinforcers” of those behaviours, in order to teach what are thought of as “adaptive behaviours.” In “discrete trials,” desired behaviours are broken down into perceived component parts and repeated until “learned” (Silberman 2015, 287; Yergeau 2018, 96). Despite crucial questions at the heart of ABA regarding *who* deems a behaviour problematic and *how* learning is distinguished from compliance, the American Psychological Association, the American Academy of Child and Adolescent Psychiatry, and a former U.S. Surgeon General, endorse ABA and its more intensive form, Intensive Behaviour Intervention (IBI), describing them as the only “scientifically proven” and “evidence-based” approaches to services for autistic children (ABC n.d.). In Ontario, the Ministry of Education Policy 140 (PPM-140) legally mandates all schools with an autism program to use ABA exclusively when providing educational assistance to autistic children (Ontario Ministry of Education 2007). Some parents name ABA as their only source of “hope” (Roumeliotis 2019). When Ontario's Conservative government announced changes to the Ontario Autism Program in 2018, parent advocates responded with mass protest, condemning the provincial government for denying their children a future by refusing to guarantee funding for ABA (Roumeliotis 2019).

In stark contrast with this positive view, some members of the autistic community identify themselves as “ABA survivors” and others refer to ABA as “torturous” (Sequenzia 2016), “abusive” (birdmadgrll 2017), “predatory” (Devita-Raeburn 2016), a “human rights violation” (Dawson 2004), and a form of “cultural annihilation” (Yergeau 2018). A former ABA therapist writes that she “abused children for a

<sup>5</sup> ABA is not the standard therapy in all regions, including the United Kingdom, Manitoba, and British Columbia (Personal Communication, Dr. Patty Douglas 2019).

<sup>6</sup> Operant conditioning uses reinforcement and punishment to modify behaviour.

living” and was a “glorified dog trainer” (birdmadgrll 2017). Carol Millman, an autistic professional dog trainer, argues that dog training is actually more humane than ABA (Millman 2018). Vivian Ly of Autistics United Canada states that the appearance of improvement with ABA comes with “internal emotional harm” (McQuigge 2017) and Ontario-based advocacy group Autistics for Autistics (A4A) refer to the forced obedience in ABA as “devastating” (A4A 2018). Researchers also support these assertions, positing ABA as a “technology of control” (Rosignano 2019, 2), as “abusive” (Sandoval-Norton, Herlinda, and Shkedy 2019) and “rhetorically and materially violent” (Yergeau 2018, 95). Gruson-Wood (2016) points out that ABA practitioners lack the informed consent of the children upon whom they act. A study by Kupferstein (2018) found a correlation between exposure to ABA and post traumatic stress disorder, while Wilkenfeld and McCarthy (2020) write that ABA resembles conversion therapy and violates the fundamental tenets of bioethics. Autistic advocate Amy Sequenzia (2016) calls ABA “autistic conversion therapy” and a form of “violence against our neurology, our identity, our humanity.”

While the clinical professions view autism as a developmental disorder, and while this view enjoys a high level of uptake in the general public, this is far from an agreed upon fact. A central feature of the field of critical disability studies (and more recently critical autism studies) is a distinction between the possible biological basis of an impairment versus the social interpretation that gives it its meaning (Straus 2010). In other words, difference is not deficit. In an essay entitled “Autism as Culture,” Straus (2010) argues that while autism may appear as a “secure natural category,” it is as historically and culturally contingent as “hysteria” and other “conditions” no longer regarded as such (535–6). Notably, however, Woods et al. (2018) caution us not to disappear autism purely as a construction, since autistic people themselves may find value in diagnosis, including access to earmarked resources. Nadesan (2005) writes that to view autism as socially constructed does not rule out a biological basis but simply suggests that the conditions of possibility for its interpretation are distinctly social.

As these perspectives suggest, what Yergeau (2018) calls the “whatness” of autism is contested (9). McGuire (2016, 21) rejects the idea of autism as a static or knowable “thing,” proposing autism instead as an “interpretive category,” produced by and producing culture. Narby (2016) considers autism to be a “genre of stories we tell ourselves” in efforts to define normal humanness—efforts that Hacking (2009) notes reveal the profound anxieties of the non-autistic. Straus (2010) proposes autism as an emerging human culture, while Douglas et al. (2019) suggest the meaning of autism is and should be in motion. Indeed, the growing neurodiversity movement reclaims “autistic” as a term of cultural identification, much like “queer” (Kapp 2020; Kras 2010). Thus, when autistic self-advocates call ABA an attack on “identity” (Sequenzia 2016) or “cultural annihilation” (Yergeau 2018), they demand autism be viewed not as a disorder but as a way of being that is unjustly and violently devalued.

The history of ABA supports autistic advocates’ charges of injustice. At UCLA in the 1960s and 1970s, psychologist O. Ivar Lovaas drew on the work of behaviourist B. F. Skinner to develop techniques for preventing autistic children from behaving in a manner distinguishable as autistic (Lovaas 1987). Lovaas’ brutal modality included electric shock, electrified floors, cattle prods, food and water

deprivation, as well as the techniques suggested by the title of a 1965 *Life Magazine* profile: “Screams, Slaps and Love” (Grant 1965). Training a fleet of parents, teachers, and research assistants, Lovaas became known for what is now ABA and its more intensive form, intensive behaviour intervention (IBI).<sup>7</sup>

When autistic advocate Amy Sequenzia writes that ABA therapists “do not see us as human” (Sequenzia 2016), she references a common sentiment: that dehumanization is integral to, not incidental to, behaviour modification. Lovaas himself was candid about the inhumanity he attributed to autistic children, declaring in a 1974 interview: “You see, you start pretty much from scratch when you work with an autistic child. You have a person in the physical sense—they have hair, a nose, and a mouth—but they are not people in the psychological sense” (Chance 1974, 76). Lovaas elaborated: “One way to look at the job of helping autistic kids is to see it as a matter of constructing a person. You have the raw materials, but you have to build the person.” Over time he reiterated this view, describing autistic children as a “tabula rasa” (Lovaas and Smith 1989, 23) with “few of the behaviours one would call social or human” (Lovaas 1993, 620). Using terms like “primitive,” Lovaas signalled the racist and colonial foundation of his project (Lovaas et al. 1973, 134–5). Indeed, it could be that Lovaas’ bid to save these particular children was inspired by whiteness and sentiments of deservedness. Bruno Bettelheim, also accused of poor treatment toward autistic children, had a “whites-only” policy at his school in Chicago (1944–1973) (Epstein 2014). Gibson and Douglas (2018) point to autism as having emerged as a distinct diagnosis in order to spare white middle-class parents the horror of a “feeble-minded” diagnosis, tainted by race and class associations.

In the early research days, not only were autistic children seen as sub- or non-human, but there were gradations to their (non)humanity—a spectrum so to speak. Lovaas was influenced by behavioural psychologist Paul Fuller, who, in 1949, published one of the first accounts of operant conditioning experimentation on a human being. Fuller wrote: “While of normal human parentage, this organism was, behaviourally speaking, considerably lower in the scale than the majority of infra-human organisms used in conditioning experiments—dogs, rats, cats” (Fuller 1949, 590). According to Silberman (2015), other influences on Lovaas included Sid Bijou, Charles Ferster, and Todd Risley. Bijou adapted Skinner’s reward and punishment techniques for use on humans, naming it “behaviour analysis.” Ferster conducted early “reinforcement” experiments on autistic children, including locking an autistic child in a room alone each day for one year. Risley’s research repurposed a shock device for animals and used it on a disabled girl. According to Silberman (2015), Lovaas was “impressed” with their pragmatism (284).

Proponents of ABA often state that the use of aversives (punishment) has fallen out of favour, yet some ABA therapists still consider punishment to be part of their toolbox (see Brown et al. 2008).<sup>8</sup> Indeed, at the Judge Rotenberg Centre in Massachusetts, where primarily racialized autistic and disabled youth reside, electric shock therapy and physical punishment are openly used (Brown 2019).

<sup>7</sup> Many consider ABA abusive, but, paradoxically, Lovaas was regarded as compassionate for not consigning autistic children to institutions. Lovaas also broke with the psychoanalytic tradition of blaming parents (Yergeau 2018).

In a 1974 interview, Lovaas described stumbling upon the use of aversive techniques by accident, having become frustrated with the self-injury of an autistic girl (Beth), he had begun hitting her. “At first I thought, ‘God what have I done,’ but then I noticed she had stopped hitting herself. I felt guilty, but I felt great. Then she hit herself again, and I really laid it on her... So I let her know that there was no question in my mind that I was going to kill her if she hit herself once more...” (Chance 1974, 79). Beth became Lovaas’ much-touted success story (Burke 1996).

Despite candid discussion of Lovaas’ electric shock punishments and even more candid photos, journalists accepted his framing and helped popularize a dehumanizing view of autistic children by referring to them as “monsters” and Lovaas as “a poet with a cattle prod” (Chance 1974, 78). When this publicity generated critique, Lovaas insisted ABA was the alternative to a bad future, highlighting the potential for self-injury and even screening videos of children self-harming for audiences of parents and media. Yet concern over self-injury did not explain why the behaviours marked for extinction included harmless speech patterns (echolalia) and body gestures (stimming), now known to help autistic people learn (Silberman 2015). Despite open violence, Lovaas framed ABA as compassionate (for preventing self-harm). Despite uncertain evidence, he presented ABA as scientific. Despite a lack of consent, he cast ABA as granting freedom (from institutionalization). These affective and intellectual strategies have proved enduring.<sup>9</sup>

In 1981, Lovaas wrote that parents should not expect ABA to cure autistic children and should only expect “small steps forward” (Lovaas 1981, 4). Yet in 1987, he published a paper citing a 47 per cent “recovery” rate and claiming ABA had achieved “normal intellectual and educational functioning” (Lovaas 1987, 3). Broderick (2011) refers to this paper as one of the “watershed moments” for ABA, propelling widespread funding and implementation. Though the study methods have been subject to extensive critique and have never been replicated, the results live on and continue to be cited as evidence of ABA’s effectiveness.<sup>10</sup> Yet Dawson (2004) points out that when ABA is defended as “evidence-based” this obscures how the evidence proves only that behaviour *can* be modified, but not whether it is healthy, positive, or ethical to do so. Indeed, Wilkenfeld and McCarthy (2020) write that from a bioethics perspective, ABA is not ethical. A recent online survey with 460 respondents (autistic adults and caregivers of autistic children), found those exposed to ABA were 86 per cent more likely to meet the criteria for post-traumatic stress disorder than those not exposed to ABA (Kupferstein 2018).<sup>11</sup> Another recent study found that camouflaging autistic traits—arguably integral to ABA—is associated with increased risk of lifetime suicidality (Cassidy et al. 2019). While

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<sup>8</sup> While some praise the reduction in aversive use within ABA, autistic people and supporters reject not only punishment, but ABA’s entire goal: the elimination of benign autistic traits (Kirkham 2017).

<sup>9</sup> Roscigno (forthcoming) writes that ABA literature has succeeded in shifting the meaning of harm to make possible the greater use of restraint on autistic children in educational settings, a practice that can result in injury or death.

<sup>10</sup> Lovaas admitted his study’s “gains” were achieved with aversive (violent) methods, yet modern ABA therapists cite these results in support of their work, raising the question (posed by Dawson 2004) of whether they admit to the use of violent techniques, as per Lovaas, or whether they cite research irrelevant to their work.



many dangerous and faux “autism cures” circulate, including “chelation,” restrictive diets, avoidance of vaccines, and bleach treatments (Silberman 2015), ABA is unique in being endorsed by health authorities and taught in university settings (Brock University 2019; Western University 2019). Moreover, ABA is funded by the majority of US health insurance plans (Yergeau 2018, 95), and in Ontario, it is the only funded autism treatment (Gruson-Wood 2018). Dawson (2004) remarks that ABA has a “distinct vapour trail” with the terms “scientifically proven” and “medically necessary” following at all times, despite the evidence being considered “weak” in systematic reviews (Reichow et al. 2018) and “in question” due to “poor-quality data, small effects, low cost-efficiency, and the evolution of ethical and societal standards” (Mottron 2017, 815). While an incitement to cure or rehabilitation is not unique to ABA, and critical disability scholars study a range of violent desires to intervene on disabled bodies and minds (Clare 2017; Kim 2017), ABA remains remarkable due to its twin shared history with LGBT conversion therapy.<sup>12</sup>

### The Human in LGBT Conversion Therapy

It has not escaped the interest of disability studies scholars that at the same time Lovaas was developing ABA, he was also leading a grant aiming to extinguish femininity in a group of boys (Dawson 2004; Gibson and Douglas 2018; McGuire 2016; Sequenzia 2016; Silberman 2015; Yergeau 2018). The Clinic Program for the Evaluation and Treatment of Childhood Gender Problems—based in UCLA’s psychology department, with Lovaas as principal investigator and his former doctoral student George Rekers as project director—received \$218,945 from the National Institute for Mental Health—an unusually large grant for the 1970s<sup>13</sup> (Burke 1996; Healy and Quinn 1975). Though Lovaas and Rekers did not refer to their own work as “conversion therapy,” with an explicit goal of diverting feminine boys away from a future as a gay man or trans woman, this program fits today’s definition of conversion therapy—any treatment with an a priori goal for a child’s gender or sexual expression (AACAP 2018).

In the US context, Grant (2004) writes that at the turn of the twentieth century, national concern over male “effeminacy” combined with the new disciplines of sexology, psychology, and psychiatry to shift the meaning of boyhood femininity from a moral dilemma to a clinical problem. By the mid-twentieth century, Bryant (2006, 25) writes that clinicians had begun to focus on “feminine boys” as a novel research population in the context of a crisis in white masculinity, changing post-war gender roles, a growing gay and lesbian liberation movement, the public appearance of transsexuals, and the rise of psychology. Bryant (2006) adds that

<sup>11</sup> Researchers exploring HIV in the autistic community have suggested ABA functions as compliance training and puts autistic people at risk for sexual assault and HIV transmission (Brandon Wulff, personal communication with author, January 2019).

<sup>12</sup> Yergeau (2018) highlights the fact that modern ABA is also used to eliminate gender non-conforming behaviours in autistic children.

<sup>13</sup> Lovaas and Rekers’ project is often mistakenly named as “The Feminine Boy Project,” but this was Richard Green’s longitudinal study in the UCLA NeuroPsychiatric Institute, with findings published in Green 1987. Green referred some patients to Lovaas and Rekers, but they did not collaborate (Bryant 2006, 2007).



over the 1960s and 1970s, the study and treatment of gender non-conforming children laid the groundwork for an institutionalized subfield and a new diagnosis to be entered into the third revision of the Diagnostic and Statistical Manual—Gender Identity Disorder in Childhood.

UCLA was a major site for this small subfield and was home to influential figures in psychiatry, Robert Stoller and Richard Green. Stoller used the psychoanalytic lens of symbiosis to pathologize feminine boys and their mothers as problematically close (Stoller 1968) while Green published early commentaries (Green 1971) and spearheaded the “feminine boy project” as the first longitudinal outcome study (Green 1987). Bryant (2007) notes that although changing behaviour was the goal of these treatments, with Lovaas as supervisor, Rekers took the study of gender-variant children more explicitly into behaviour modification, quickly publishing reports touting success (see Rekers and Lovaas 1974). While Lovaas later downplayed his involvement, claiming that “gender deviation” was of “absolutely no interest to him” (Burke 1996, 47), Rekers credited Lovaas with designing the treatment, presumably based on ABA (Rekers 2009). When UCLA student activists staged a protest against the treatment on campus, Lovaas was first author on a defense published in the campus newspaper (Lovaas et al. 1975) telling reporters he “felt compelled” to treat children with “cross-gender problems” (Healy and Quinn 1975).

The treatment of feminine boys and that of autistic children were remarkably similar across a number of registers. In method, both projects recorded children’s mannerisms, speech, and hand gestures using two-way mirrors and hidden microphones (Rekers 1972). Parents and teachers were trained as “paraprofessionals” with treatment extended to the home and school (Gruson-Wood 2016; Pyne 2014a). Rewards and punishments were administered based on compliance, targeting the early-years learning window. Similarities also include the forms of power in use, including panoptic governance technologies and chain-like hierarchies from therapist to parent to child (Gruson-Wood 2016; Pyne 2014a; Silberman 2015). Self-monitoring (self-governance in Foucauldian terms) was the goal (Gruson-Wood 2016; Pyne 2014a), with “success stories” singled out for publication—“Beth” from the autism treatment and “Kraig” from the feminine boy treatment, who later died by suicide (Bronstein and Joseph 2011). Yet the cruelty of the gender treatment lay primarily in denial of parental affection,<sup>14</sup> while autistic children were subjected to this as well as brute violence (Grant 1965; Rekers 1972).

With respect to rationale, both projects relied on a certain temporal relation to establish the ethical warrant for intervention—namely, the projection of a disordered future, and as I will discuss later, a disabled future, with enough hopelessness to inspire risk yet enough hopefulness to justify it.<sup>15</sup> In both treatments, clinicians projected future incarceration, either institutionalization for autistic children (Lovaas et al. 1973) or arrest for gender non-conforming children who become homosexual or transsexual (Rekers et al. 1977). The threat of peer ostracism

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<sup>14</sup> Rekers (1972) did however record that “Kraig’s” father beat him at home for his gender expression.  
<sup>15</sup> See Broderick (2009) and Gilbert and Douglas (2018) on the role of hope in ABA.

(Rekers et al. 1977) and self-harm played important roles in justifying both treatments, including the spectre of self-injury for autistic children and suicide for gender-variant children (Rekers et al. 1977). Both treatments were rationalized as being in children's (future) best interests.

Bryant (2008) notes that from the start, critique followed the "feminine boy" studies, and Rekers in particular, whose detailed reports made him a "lightning rod" (Bryant 2006, 28). One year after Rekers and Lovaas (1974) published their first report (tellingly in the *Journal of Applied Behavior Analysis*), a protest was held on the UCLA campus (Quinn 1975) and an article appeared in *Rolling Stone* magazine: "The Gender Enforcers" (Rorvik 1975). Within several years, critiques appeared in the clinical literature (Morin and Schultz 1978; Nordyke et al. 1977; Winkler 1977; Wolfe 1979). Some criticized the methods as inconsistent with true behaviourist principles (Wolfe 1979), yet the majority of commentaries reflected a feminist or gay-liberation critique based on the underlying values (Winkler 1977), the threat to social diversity (Morin and Schultz 1978; Nordyke et al. 1977), and the right of children to a positive future gay identity (Morin and Schultz 1978). While these critiques would have been applicable to the autism treatment as well, only the treatment of gender non-conforming children was criticized. One commentary did mention autistic children, but only to note the treatment seemed "appropriate" for them in comparison with the gender treatments: "It is one thing to argue the expediency and appropriateness of the use of punishment on extreme self-mutilation behaviour by autistic children, and another to argue, at this point in our clinical wisdom, for its use contingent on playing with girls and emitting feminine behaviours (Nordyke et al. 1977, 556)."

Indeed, one of the co-authors of this critique was Donald Baer, lead author of the 1968 paper to which many modern ABA programs trace their roots<sup>16</sup> (Wilkenfeld and McCarthy 2020). During the UCLA campus protest against the gender treatments, the Coalition Against the Dehumanization of Children group did not protest the autistic children's dehumanization, despite violent details made public ten years prior (Grant 1965). Unfortunately, critics in the clinical literature focused their opposition on what they interpreted only as homophobia, using their publications as opportunities to point the finger at children we would today call trans as the "proper objects" of such treatment (Bryant 2008, 467).

Bryant (2008) writes that more critique of the feminine boy treatment emerged in the 1990s, motivated by the contentious introduction of the Gender Identity Disorder in Childhood diagnosis in the DSM III and the publication of Green's (1987) long-term data suggesting a homosexual outcome for "feminine boys." Bryant (2008) also notes that the critiques reflected a desire to rescue only some gender non-conforming children from pathology. Leveraging the burgeoning gay rights movement and the 1973 removal of homosexuality from the DSM, critics argued that children who would grow up to be gay were healthy and should be spared the insult and harm of diagnosis and treatment, better suited for those with

<sup>16</sup> Donald M. Baer, Montrose M. Wolf, and Todd R. Risley, "Some Current Dimensions of Applied Behavior Analysis," *Journal of Applied Behavior Analysis* 1, no. 1 (1968): 91–97.

“true gender disturbance” (read: those who might grow up to be trans) (Bartlett, Vasey, and Bukowski 2000; Richardson 1999).<sup>17</sup>

Bryant (2008) observes the transphobia in the critic’s strategy—to offer up trans children for the very treatment they themselves admitted could “maim” (Morin and Schultz 1978, 147).<sup>18</sup> Yet transphobia is only one component of this strategy; ableism is arguably an integral, though rarely remarked on, aspect. As a psychological project that openly aimed to normalize children, Rekers’ treatment regime was unsurprisingly a not-so-subtle expression of ableism and sanism. Notably, however, the progressive feminist and gay critics who responded used identical ableist language to discursively attach disability to the children who might be trans and distinguish them from those they sought to rescue (Richardson 1999). Indeed, in some passages, their pathologizing language was indistinguishable from the clinicians they critiqued.

In a particularly emblematic article, Richardson (1999) argues that feminine boys who grow to be gay men are “non pathological.” Describing these children as “healthy” in excess of fifteen times in one article, Richardson (1999) sings their praises as “creative” (50), “gentle” (49), “whole” (50), “unique” (50), “special” (49), and “worthy” (49). Yet he writes that these boys are at risk of being diagnosed and treated alongside the truly gender-disturbed (read: those who might become trans women), whom he describes as “disordered” (43), “distressed” (43), “compulsive” (47), “inflexible” (48), “joyless” (48), “inherently pathological” (43), and “impaired” (45). Like many critics, Richardson zeroed in on “impairment” as the “crucial distinction” (43), and argued for a deserved place in the DSM for children we would today call trans.

With harsh criticism emerging not only from journalists and activists (Rorvik 1975) but also mental health professionals (Nordyke et al. 1977; Wolfe 1979; Winkler 1977), this was likely a worrying time for Rekers, Lovaas, and colleagues. Bryant (2008) demonstrates that there was a visible impact in their subsequent publications. Reframing their late 1970s treatment rationales in response, Rekers, Lovaas, and colleagues tellingly tone down their homophobic discourses, yet intensify their ableist discourses in ways not previously seen. In one post-critique article, Rekers et al. (1977) describe gender non-conforming children using the terms “debilitated” (6), “socially handicapped” (9), suffering from “disabling consequences” (6), “disabling symptoms” (7), and “crippling difficulties” (10). In another response to criticism, Rekers et al. (1977) use the terms “learning deficit” (567) and “debilitating” (566) to describe feminine boys, while Rekers et al. (1978, 129) rationalized that the “accepted humanitarian approach” to “children with special needs” (feminine boys) is to provide them with “special assistance” and not leave them alone with a “debilitating” condition. Decades later, also in response to critique, Zucker (2006) would justify the diagnosis and treatment of gender non-conforming children by suggesting they have trouble with “basic cognitive concepts” concerning their gender and are burdened by a “developmental lag” that

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<sup>17</sup> The term “transgender child” was not in use at this time but the description of those said to be deserving of diagnosis and pathologizing treatment is unmistakably trans.

<sup>18</sup> Bryant (2008) does not explicitly name “transphobia” but points to the production of normative queer subjects.

may meet the requirement of impairment needed to justify diagnosis (544). Ableism has played an important role in the pathologization of trans identity.

Despite the failure of feminist and gay liberation critics to challenge this particular pathologization, over the next few decades, trans identity would indeed come to be substantially (though never entirely) depathologized, with a particular paradigm shift regarding young trans identities (Pyne 2014b). In 2013, the diagnosis of Gender Identity Disorder in Childhood was removed from the DSM-V and replaced with the somewhat lesser pathologizing diagnosis of Gender Dysphoria (APA 2013). Trans advocates had argued that the benefit of “Gender Dysphoria” was to maintain a route to medical transition based on bodily discomfort, but also to rehabilitate trans identity as only situationally troubled prior to transition, rather than a lifetime disorder (Winters 2005). Efforts to remove the Gender Incongruence of Childhood diagnosis from the eleventh edition of the International Classification of Diseases were ultimately unsuccessful (Winter et al. 2016). Yet autistic and non-binary advocate Lydia Brown (2016) points out that while rushing to affirm trans identities as valid, trans movements often create more stigma around mental illness and disability by insisting “there’s nothing wrong with us,” thus positioning trans people as undeserving of the coercive and sometimes violent treatment disabled people face.

In Ontario, this era also saw the 2015 closure of the controversial Child, Youth and Family Gender Identity Clinic at the Centre for Addiction and Mental Health (CAMH) in Toronto. Though local to Toronto, this clinic was influential internationally, and Ansara and Hegarty (2011) identify it as the knowledge production centre for the pathologization of gender non-conforming children. Despite, or perhaps because of these moves toward depathologization, one year later, media articles appeared featuring a psychologist from the now closed clinic (Bradley 2017; Kirkey 2017) suggesting that to affirm trans children may be a mistake, because “Transgender Children Could Actually be Autistic” (Nsbuga 2017). Turning now to the Ontario legal context, I consider the disparity in representations of trans and autistic personhood through an analysis of both the province’s ban on LGBT conversion therapy, which rolled out alongside the promotion of increasing levels of what Sequenzia (2016) calls “autistic conversion therapy.”

## **Ontario’s Legal Context for Conversion Therapy and Applied Behaviour Analysis**

Conversion therapy and ABA have both been debated in the media and among professional practitioners—but much less so within law. In Ontario, however, there are instances in which these questions have been pursued through legal avenues—instances that are illuminating because the law, as the official discourse of the state, has a disproportionate capacity for meaning-making. The following sections address the legal context in Ontario with respect to conversion therapy and ABA.

### **Conversion Therapy and Ontario Law**

As noted, the problem with conversion therapy has typically been understood as one of homophobia. Professional efforts to change sexual orientation were declared

unethical by the American Psychiatric Association in 2000, yet without mention of gender corrective therapies (APA 2000). In some US jurisdictions that have banned conversion therapy, such as California, protection for gender identity was not included. Yet some professional associations eventually did begin to address this in position statements. The World Professional Association for Transgender Health stated that attempts to change gender identity were “unethical” (Coleman et al. 2012). The Yogyakarta Principles, developed to apply human rights law to LGBT issues, stated that gender identity is not to be “treated, cured or suppressed” and classified such treatment as “medical abuse” (Yogyakarta 2006). In Canada, a 2015 position statement by the Canadian Association of Social Workers and Canadian Association of Social Work Educators (2015) declared this treatment “an abuse of power and authority,” and in 2014, the Ontario Human Rights Commission released a policy naming gender expression and gender identity as matters of “freedom” and “self-determination” protected for residents of any age (OHRC 2014). In 2015, a number of op eds and blogs specifically criticized the treatment of trans children at the Child, Youth and Family Gender Identity Clinic at the Centre for Addiction and Mental Health in Toronto (Bauer 2015; Houston 2015; Pyne 2015a).<sup>19</sup>

In March 2015, Member of Provincial Parliament (MPP) Cheri DiNovo introduced Bill 77 in the Ontario Legislature, seeking two amendments. The first sought to amend the 1991 *Regulated Health Professions Act* to prevent health professionals from attempting to “change the sexual orientation or gender identity of a person under 18 years of age.” Additionally, as health care is publicly funded in Ontario, Bill 77 also sought to amend the *Health Insurance Act* (1991) to render uninsurable any treatment seeking to “change a person’s sexual orientation or gender identity.”<sup>20</sup> Following first reading, media response was positive (Hawkes 2015; Lenti 2015; Urbach 2015). Urbach (2015) wrote in the *National Post* that “gender identity is innate” and therefore trying to change a child’s sexual orientation or gender identity “simply doesn’t work.” DiNovo stated that such therapies were “tantamount to abuse” because “this is who these kids are” (Urbach 2015).

The following month, Bill 77 had its second reading, with public debate unfolding in the form of radio discussion (CBC 2015) and op eds, both in favour of the bill (Pyne 2015b) and against it (Kay 2015). Kay’s column was published on the eve of the bill’s presentation to the province’s Standing Committee on Justice Policy. With discursive efforts to re-associate trans people with pathology and disability, Kay refers to trans people as “those afflicted with gender dysmorphia” [sic] and accuses the bill of “handicapping their anguished parents’ search for help” (Kay 2015). Like critics decades before, Kay separated trans youth from gay youth, agreeing that conversion therapy based on sexual orientation is “ineffective and unethical” but falsely claiming that therapies “re-connecting gender identity with biological reality” have “a solid record of success.” Referring to trans identities as “emotive claims made by those least capable of assessing their condition with

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<sup>19</sup> I was personally active in advocating against these treatments at this time.

<sup>20</sup> Bill 77 supra note 3.

objectivity,” Kay quoted psychiatrist Susan Bradley, warning these children must be scrutinized because some may harbor “traits within the autism spectrum” (Kay 2015).

Though media noted that bills from private members rarely advance (Sherwood 2015), when Bill 77 came before the Standing Committee on Justice Policy in the Ontario legislature, it met with no real opposition, and most speakers used their testimony to confirm the need for trans people to “be who they really are” and to distance trans people from assumptions of “mental disorder” (OLA 2015). With the unanimous support of the Justice Committee, Bill 77 received royal assent in the Ontario Legislature on June 4, 2015. Ontario became the first Canadian province to pass legislation banning conversion therapy, only a few short months after the bill’s first reading.<sup>21</sup>

Response to the passage of Bill 77 was overwhelmingly positive (Csanady 2015; Ferguson 2015; Ubelacker 2015).<sup>22</sup> Defending the right of LGBT youth to be free of these treatments, proponents cited the risk of suicide and respect for diversity (Csanady 2015). Ontario Minister of Health Eric Hoskins remarked that conversion therapy has “no place in Ontario, a province where acceptance, respect and diversity are our most cherished strengths” and, further, that people have the right to “be who they are” (Ferguson 2015). These statements contrast starkly with the representation of autistic youth in Ontario law and public debate.

### ABA and Ontario Law

Unlike Bill 77, there is no one law in Ontario that speaks to ABA and no law prohibiting it. Yet, ABA is certainly discussed in the Ontario legal and public policy realm. The Ontario Ministry of Education (2007) states that Policy/Program Memorandum No. 140 (PPM-140) provides “guidance” on incorporating ABA into programs for autistic students. Yet this can be interpreted as legally compelling schools with autism programs to provide ABA (Gruson-Wood 2018). The most significant Canadian case was *Auton v. British Columbia* in 2004, in which the Supreme Court of Canada overturned two previous lower court rulings that had compelled the government to fund ABA in response to parents’ claims.<sup>23,24</sup> Focusing on Ontario, legal cases have followed a similar pattern to the *Auton* case, with lawsuits filed by parents to compel school boards to provide ABA,<sup>25,26,27,28</sup> to compel a parent to pay child support for ABA,<sup>29</sup> and to compel a practitioner to provide ABA treatment that had been discontinued.<sup>30</sup> Each of these cases involved

<sup>21</sup> Manitoba announced in May 2015 that conversion therapy was not part of the health system and urged victims to file complaints. Ontario was the first province to pass legislation.

<sup>22</sup> Psychiatrist Richard Green, who led the early feminine boy project at UCLA, opposed Bill 77 and similar US legislation (Green 2017).

<sup>23</sup> *Auton (Guardian ad litem of) v. British Columbia (Attorney General)*, 2004 3 SCR 657, 2004 SCC 78.

<sup>24</sup> Autistic researcher Michelle Dawson (2005) authored a key analysis of the *Auton* decision.

<sup>25</sup> *C v Dufferin-Peel Catholic District School Board*, 2003 ONSET 4.

<sup>26</sup> *C v Simcoe County District School Board*, 2003 ONSET 3.

<sup>27</sup> *M W and A W v Simcoe County District School Board* 2004 ONSET 3.

<sup>28</sup> *Wynberg v Ontario*, [2005] 252 DLR (4th) 10, 2005 CanLII 8749 (ONSC) [Wynberg 2005].

<sup>29</sup> *Davis v Davis*, 2018 ONCJ 53.

<sup>30</sup> *Ceretti v Hamilton Health Sciences-McMaster Children’s Hospital*, 2010 ONSC 252.

the pursuit of more ABA rather than less, and each was filed on behalf of and in the name of an autistic child. I consider one case in particular.

In the 2005 *Wynberg v. Ontario* case,<sup>31</sup> a group of parents representing thirty-five autistic children from thirty families sought to compel the province to fund ABA therapy. Five years previously, Ontario had instituted behaviour treatment through the Intensive Early Intervention Program (IEIP) for autistic children from the ages of two to five. The ABA/IBI treatment was not available in the education system, however, nor once the child reached six years of age. The plaintiffs (parents as litigation guardians of their children) alleged the province had breached their rights under the *Charter of Rights and Freedoms*, ss. 15 (guaranteeing “equality rights”) and 7 (guaranteeing “life, liberty, and the security of the person”). As summarized by the court, they argued, under section 15, that the children’s equal right to participate in society required ABA and, under section 7, that the absence of ABA was a breach of the parents’ right to “security of the person.” Again, as summarized by the court, the plaintiff’s arguments and expert witnesses advanced a highly pathologizing view of autism, described by one expert as “one of the most devastating pediatric anomalies.”<sup>32</sup> The concepts of harm and injury were summoned only to refer to denial of ABA. Life with the children was described as “heartbreaking,”<sup>33</sup> and a “nightmare.”<sup>34</sup> When ABA was discussed, the wording seemed lifted directly from Lovaas’ 1987 suspect claims, suggesting ABA leads to “successful integration in regular schools”<sup>35</sup> for many and “completely normal functioning”<sup>36</sup> for some. Ultimately, ABA was presented as the only option for these children. While expert testimony noted ABA is used with “many different populations,”<sup>37</sup> no mention was made of the connection to LGBT conversion therapy.

In their defence (as summarized by the court),<sup>38</sup> counsel and experts acting for the Ontario Ministry of Education notably did not ask the court to consider ABA as potentially harmful, but instead to agree it should be classified as health care rather than education, and thus the ministry not compelled to fund it. Counsel argued other interventions might be “equally effective,” and in only one sentence of the judgment was an ethical issue mentioned. Early in the lengthy judgment, the possibility is raised that ABA might be a “dehumanizing and cruel methodology,”<sup>39</sup> yet this statement is never revisited. Neither the parents nor the government presented evidence from autistic-led organizations or autistic self-advocates.

The 2005 ruling did not find in favour of the families in all respects but did find the children’s section 15 Charter rights had been violated due to “age discrimination” in ABA availability. The families were awarded declaratory relief and damages

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<sup>31</sup> *Wynberg* 2005, supra note 26.

<sup>32</sup> *Ibid* at para 39.

<sup>33</sup> *Ibid* at para 40.

<sup>34</sup> *Ibid* at para 47.

<sup>35</sup> *Ibid* at para 69.

<sup>36</sup> *Ibid*.

<sup>37</sup> *Ibid* at para 92.

<sup>38</sup> *Ibid*.

<sup>39</sup> *Ibid* at para 95.



“for past and future ABA/IBI.” The decision found “the absence of ABA/IBI” would lead to exclusion from “the opportunity to access learning,” “deprivation of skills,” the “likelihood of isolation from society,” and “loss of the ability to exercise the rights and freedoms to which all Canadians are entitled.”<sup>40</sup> However, the following year, the Ontario Court of Appeal reversed the Wynberg decision,<sup>41</sup> and leave to appeal was denied by the Supreme Court of Canada, effectively ending the case.<sup>42</sup>

As is evident, Ontario legal challenges with respect to ABA have not necessarily been successful. Lawsuits to compel government ministries to fund ABA have been denied,<sup>43</sup> as have attempts to compel school boards to provide ABA outside of special education classrooms.<sup>44,45,46</sup> Applications to have ABA/IBI programs re-enrol a de-registered child have been denied.<sup>47</sup> Even attempts to have ABA practitioners certified as court experts<sup>48</sup> or as registered psychotherapists<sup>49</sup> have been dismissed. Yet thus far in Ontario, ABA has won in other ways. Autistic children are uniformly described in legal proceedings as disordered and in need of modification. In no Ontario case thus far has evidence from an autistic self-advocate or autistic-led organization been presented.<sup>50</sup> To date, all related legal challenges have claimed the right of children to be modified by ABA, rather than the right *not* to be. Against the wishes of the autistic community, children are described as *having* autism rather than *being* autistic (Sinclair 1999). As Klar, Douglas, and McGuire (2016) note, media have accepted the “afflicted” framing of autism offered by ABA proponents, with few to no autistic perspectives included. With the recent announcement of government changes to autism funding, the past year has finally seen autistic self-advocates interviewed for comment (TVO 2019) and appointed to a provincial task force (Ontario 2019)—the result of much organizing by groups such as Autistics4Autistics. However, with a central place in public discourse and policy, ABA remains positioned to shape life for autistic people in Ontario and beyond.

### Building a Person: One Thing and Another

In recent decades, the sweeping change in clinical response to trans children has been nothing short of seismic. The youth gender clinic, once tasked with staving off trans identity (see Green 1971), is now expected to act in support of trans youth. The spectre of self-harm and suicide, once cause for modification (see Rekers and Lovaas 1974), is now the rationale for insisting children be welcomed as they are. There are exceptions to this progress—for example, a slate of dangerous new bills

<sup>40</sup> Ibid at para 738.

<sup>41</sup> *Wynberg v Ontario*, 2006 CanLII 22919 (ONCA) [*Wynberg* 2006].

<sup>42</sup> *Wynberg v Ontario*, 2007 CanLII 11900 (SCC).

<sup>43</sup> *Wynberg* 2006, supra note 39.

<sup>44</sup> *C v Dufferin-Peel Catholic District School Board*, supra note 23.

<sup>45</sup> *C v Simcoe County District School Board*, supra note 24.

<sup>46</sup> *M W and A W v Simcoe County District School Board*, supra note 25.

<sup>47</sup> *Ceretti v Hamilton Health Sciences-McMaster Children’s Hospital*, supra note 28.

<sup>48</sup> *Halton Children’s Aid Society v J.B. and D.T.*, 2018 ONCJ 884.

<sup>49</sup> *AC v CRPO*, 2017 HPARB

<sup>50</sup> In *Auton v British Columbia*, however, autistic researcher Michelle Dawson received intervener status and testified to the harms of ABA (Dawson 2005).

proposed in 2020 that would criminalize transition care for trans minors in the United States (Moreau 2020). Yet conversion therapy, once the primary clinical response to gender non-conformity, was and remains banned in a number of Canadian provinces, including Ontario. Indeed, a number of municipalities also recently voted to ban conversion therapy, and given the proposed federal ban in 2020, the involvement of all three levels of Canadian government on this issue appears to be unique internationally (Bensadoun, 2020).

This present analysis, however, illustrates that autistic children (including those who are trans) remain subject to another form of alarming treatment—ABA—which shares its roots with conversion therapy. Psychologist O. Ivar Lovaas, involved in both treatments but more readily associated with ABA, considered his work to be “building a person” (Lovaas and Smith 1989). While the early ABA treatment for autistic children was markedly more brutal, nonetheless, dehumanization was also at the heart of the gender treatments. The ableist nature of that dehumanization can be seen in clinicians’ efforts to defend conversion therapy in the 1970s and 1990s by discursively linking gender non-conforming children to illness and disability, describing them as “suffering” from “crippling difficulties” and “impairments” (Rekers et al. 1977, 10). Unfortunately, when progressive critics challenged conversion therapy, dehumanization was also visible in what they would and would not object to. Illuminating a spectrum of personhood, critics protested the modification of gay but not trans children, and most certainly not autistic children. Nordyke et al. (1977) do mention autistic children, but only to offer approval for the “appropriateness of the use of punishment” on them. This is “one thing” they argued, but it is quite “another” to do this to (non-disabled) children simply for being gay (Nordyke et al. 1977, 556).

Dehumanization remains a present-day reality for autistic children, confirmed by a review of the Ontario ABA legal milieu. In media coverage and legal judgments, autistic children are described not as children who *are* autistic, but as children *with* autism, a semantic difference that holds much significance. In a widely read online statement, autistic activist Jim Sinclair (1999) articulated what is now known as the “identity first” standpoint, typically insisted upon in the autistic community: “Saying ‘person with autism’ suggests that the autism can be separated from the person,” Sinclair (1999) wrote. This separation is not possible nor desirable, Sinclair (1999) continued: “If I didn’t have an autistic brain, the person that I am wouldn’t exist.” Trans and autistic writer Bridget Liang quips that she is not “a person with autism” any more than she is “a person with gay” or “a person with trans” (Liang and Pyne 2018). This tongue-in-cheek remark aside, there is of course a parallel to “person with autism” and it is not “person with trans,” it is “person with gender identity disorder.” A person who *has* something, can also *not* have it. This is the calling card of conversion therapy.

In *War on Autism*, Anne McGuire (2016, 190) writes that it is no mistake that the phrase “living with autism” underscores autism as “an appendage that has become attached to the life of the person.” McGuire asserts that the will to cure autism, eradicate it, linguistically separate it from the person it is *with*, is intimately tied to the very real eradication of autistic people. The staggering number of homicides of autistic children committed each year by family members are

attempts at achieving “life without autism” (McGuire 2016, 194).<sup>51</sup> While ABA is most often linked to violence through a discussion of aversive punishment, Yergeau (2018) writes that even with no aversives, ABA is its own form of punishment, particularly when administered in its most intensive forty hour-a-week form (IBI)—a full-time job for the child, denying their own desires and ways of being. When Yergeau (2018) refers to ABA as “cultural annihilation,” they signal the forced separation of autistic people from autistic culture, community, identity. Wilkenfeld and McCarthy (2020) write that both conversion therapy and ABA work to coercively modify identity and thus violate the fundamental tenets of bioethics.

Returning to the 2015 debate surrounding Ontario Bill 77 to ban conversion therapy, the message delivered by activists, journalists and politicians was the illegitimacy of viewing trans people as having a “mental disorder” and the importance of “being who you are” (Ferguson 2015; Urbach 2015). In contrast, conservative columnists in opposition referred to trans people as “those afflicted with gender dysmorphia” [sic] (Kay 2015). That conversion therapy is seen as an attack on identity is evident in trans activists’ insistence on *being* trans, rather than *having* “gender identity disorder.” Autistic individuals continue to struggle to be regarded as autistic, rather than a person with autism. The diverging discourse surrounding these identities reflects the legal gulf that now separates autistic versus allistic (non-autistic) trans youth in Ontario.

While the depathologization of gay and trans identity is often taken as an unquestioned good, a review of changing clinical opinion, public opinion, and legal opinion provides a more critical view. The association of transness with disability during attempts to justify conversion therapy and the disassociation of transness from disability when protesting these therapies points to ableism as the active ingredient in trans pathologization. That ableism seems to function as the ethical warrant for the violation of personhood should be cause for alarm on behalf of all disabled people, in particular autistic children, who are abandoned to fates not tolerated for others. In addition, this points to key questions about why the paternalistic gaze on autistic trans individuals intensified in the wake of trans depathologization successes (see Bradley 2017; Kirkey 2017; Nsbuga 2017). Trans-positive legal reforms such as Ontario’s Bill 77 may protect some trans youth from harm, but this does not extend to autistic trans youth who are subject to another modification strategy—ABA—which, far from being banned, is currently comprehensively funded and aggressively promoted (Ontario Ministry of Education 2007).

In closing, drawing on legislation, clinical literature, and media texts, I have argued that the process of Ontario queer and trans communities wresting themselves out from under conversion therapy was closely tied to a discursive shift from *having* a condition to *being* a human—a process of “building a person.” In juxtaposing the twin histories of LGBT conversion therapy and applied behaviour analysis (ABA) against their unrecognizable present-day legal statuses, a question arises regarding at whose expense a rights-bearing trans person has been built. I end

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<sup>51</sup> In the past five years, 600 people with disabilities, many autistic, were murdered by family members (ASAN 2020).

by calling for greater attention to what Brown (2016) names as the ableism within trans depathologization arguments, and for unequivocal support for autistic communities as they confront the harmful therapies that target them (Sequenzia 2016).

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