

Erosion of the Rights of Female Students in York's Classrooms

J. Paul Grayson
Department of Sociology,
York University

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Introduction

In September 2013 I had an unusual request from one of my male students. For religious reasons, he requested an accommodation so that he would not be required to publicly interact with females in the course for the completion of a required group assignment. Because of its implications for female students, I declined the request; however, the Dean of the Faculty ordered me to make the accommodation. It was his belief that such an accommodation did not affect the rights of females. Although the student has since decided to complete the assignment, the Dean continues to insist that an accommodation be made.

This incident is important for two reasons:

1. It reveals that male students have the religious right not to interact with female students for the completion of assignments.
2. It raises the question of who determines when the exercise of the religious rights of males overrides the secular rights of female students and the criteria that are used when making this evaluation.

The Framework

Behaviour in universities is constrained by the Ontario Human Rights Code. In a discussion of competing human rights it is made clear that, “our laws guarantee rights such as freedom of expression and protection against discrimination and harassment based on gender, creed, sexual orientation and disability, among other grounds. They require that all rights be given equal consideration”. This said, “the law also recognizes that rights have limits in some situations, particularly where they substantially interfere with the rights of others”.¹ At York University and in other post-secondary institutions discrimination is defined as, “differential treatment based on a personal characteristic which has an adverse impact on an individual or group.”²

The Issue

The section of sociology 2030 that I teach is offered online. As part of the pedagogy, students are assigned to learning groups. One of the functions of the learning groups is the provision of participants for a focus group meeting that must be conducted by each member of the group.

Learning group members are used as participants in the focus groups for two reasons. First, it is often difficult for students to find willing participants for their focus groups. Second, it is

¹ Ontario Human Rights Commission, Policy on competing human rights.
<http://www.ohrc.on.ca/en/policy-competing-human-rights/7-organizational-process-addressing-competing-rights>.

² Anonymous, What is discrimination? <http://www.yorku.ca/lfoster/2012-13/MPPAL%206130/lectures/Discrimination%20and%20Harrassment%20Framework.pdf>.

important for students to have the experience of both being a participant in, and a facilitator of, a focus group. I provide exceptions for students who live afar (Egypt, for example). Under these conditions I allow students the option of using friends or co-workers as subjects for their focus groups; however, as students are denied the possibility of being a focus group participant, the situation is not ideal.

On September 20, 2013, I received the following request from a student in the course:

One of the main reasons that I have chosen internet courses to complete my BA is due to my firm religious beliefs, and part of that is the intermingling between men and women...It will not be possible for me to meet in public with a group of women (the majority of my group) to complete some of these tasks.

I should note that in both the course outline posted on the web and in the first module of the course it is made clear that students are required to conduct a focus group.

York is a public secular university with a commitment to equality. As a result, my initial assessment was that to grant the accommodation would be to give tacit support to a negative view of women. Despite this assessment, rather than dealing with the request personally, I thought I should reply to the request with a principled statement from the University. With this thought in mind I forwarded the request to both the Dean and the Director of the Center for Human Rights.

The Response

In response to my memo to the Dean, on September 27, 2013, I received a reply for the Vice Dean. In this communication, among other things, the Vice Dean argued that as I made accommodations for students who because of distance were unable to meet with members of their learning group for the completion of the focus group, the same consideration should be extended to the student who did not want to meet with his group because it included females in its membership. He concluded by saying, "I think Mr. X must be accommodated in exactly the same way as the distant student has been."

In reply to this communication, on September 27, I asked the Vice Dean, "can I assume that a similar logic would apply if the group with which he did not want to interact was comprised of Blacks, Moslems [or] homosexuals." Biblical justification can be provided to justify the exclusion of such groups. I added that:

York is a secular university. It is not a Protestant, Catholic, Jewish, or Moslem university. In our policy documents and (hopefully) in our classes we cling to the secular idea that all should be treated equally, independent of, for example, their religion or sex or race. Treating Mr. X equally would mean that, like other students, he is expected to interact with the female students in his group. Treating the female students equally means

that they, like other students, could expect to interact with other students independent of their sex, sexual orientation, religion, race, and so on.

In his reply to my memo of September 27, on October 4, the Vice Dean outlined that there were three principles involved in granting an accommodation:

1. "The first is the sincerity of the student's beliefs, which I think we have to take as granted." I subsequently discovered that we are not allowed to ask questions relating to the nature of religious requests for accommodation.
2. "The second is that the accommodation ought in no way to interfere with the experience of other students in the class." Later I will show that the granting of the accommodation could indeed negatively affect the experiences of females in the class.
3. "The third is that the academic integrity of the course remain intact."

In this communication the Vice Dean repeated his assertion that, "I have concluded that Mr. X has to be accommodated."

In my October 6 response to this position I pointed to a number of additional requests that would not contradict the three principles identified by the Vice Dean:

1. "For religious reasons a student in a class or tutorial with a female instructor or teaching assistant would be able to demand to be moved to a different section of a course or tutorial."
2. "A sufficiently large number of males would be able to argue for a separate tutorial from which females would be excluded."
3. "Students could argue for sex segregated seating areas in lecture halls."

Consistent with the three principles articulated by the Vice Dean I pointed out that we would have to take as granted the sincerity of the religious beliefs of those requesting such accommodations; that it could be argued that the granting of the accommodations would not interfere with the experiences of others in the class; that the granting of the accommodations would not affect the academic integrity of the class.

To a large degree, the responses I received from the Center for Human Rights were consistent with those from the Dean's office; however, the Director did begin his September 24 response to my forwarding of the request for accommodation with the comment, "This is a new one and potentially challenging as it seems to involve competing rights." The Director added that, "While I fully share your initial impression, the OHRC does require accommodations based on religious observances and the case law does not encourage the exploration of the reasoning behind these religious observances." In my September 24th response to the Director I noted that, "I doubt that we would sanction a student refusing, for religious reasons, to interact with Blacks in classes even though Biblical justification could be found. I see no difference in this situation."

In subsequent emails (September 30 for example) the Director, like the Vice Dean, made tacit reference to the principle of academic integrity of the course: as long as academic integrity were not affected, the accommodation should be granted. In response, on the same date, I sent a reply in which I indicated that:

I'm afraid that I don't see how academic integrity enters the equation. What we have is a situation in which a student is asking a professor, and, by implication, an institution, to be an accessory to sexism. The issue remains even if academic integrity were not at stake...I'm reluctant to see the main issue obscured. Moreover, if we admit the issue of academic integrity, that is for the individual professor to judge."

After the Director's initial comments, there was no further reference to the possibility of competing human rights.

On October 9 the issue of the accommodation was raised in a departmental meeting. During this meeting there was general agreement that the granting of an accommodation that would excuse a male student from interactions with females was inconsistent with the secular rights of women. As a result, the following motion was passed with no dissenting voices:

Whereas it is recognized that York recognizes diversity, be it resolved that academic accommodations for students will not be made if they contribute to material or symbolic marginalizations of other students, faculty or teaching assistants.

On the basis of this motion, on October 10, I wrote to the student indicating that, "after discussing the matter with my colleagues, it is clear that, among other things, what you ask is contrary to departmental policy. As a result, I cannot grant the request." I copied the Vice Dean on the communication.

On the following day, October 11, the Vice Dean wrote the following to the student, with a copy to me and the Chair, Philip Walsh:

Professor Grayson will not accommodate your request, but the Department of Sociology has agreed to find an alternate means of assessment to cover off the percentage of the final grade that was to be derived from the group projects in which you wish not to participate in order to avoid having to interact directly with women in public.

The Department has also agreed to receive and grade all your work in the course should you wish to continue in it. However, I recognize that these revised arrangements may not be ideal and, if you would prefer to discontinue the course, I will ensure that all tuition fees you have paid for it are refunded.

I consulted with the Chair over this communication, and, as I suspected, the department had not agreed to find an alternate means of assessment nor had it agreed to grade all of the student's work. In fact, the Vice Dean had not communicated with the Chair over these matters. As a result, on October 13, I wrote to the student and indicated that:

By now you may have received a memo from the vice dean with respect to your request. I must point out that the vice dean does not speak for the department. The chair, Philip Walsh, speaks for the department. Unless Professor Walsh confirms the commitments of the vice dean, it is best to treat them as non-applicable.

On October 16 Professor Walsh wrote to the student confirming that the department had not agreed to the promises articulated by the Vice Dean. In his memo he wrote that:

Please note that the Department has recently approved the following resolution:

Whereas it is recognized that York recognizes diversity, be it resolved that academic accommodations for students will not be made if they contribute to material or symbolic marginalizations of other students, faculty or teaching assistants.

Professor Grayson has decided that your request for accommodation conflicts with this principle.

I am afraid I also need to inform you that you have been misinformed by Vice Dean Michasiw concerning alternative means of assessment, and the grading of your work in this course. The Department has not, at this point, agreed to find an alternate means of assessment for you; nor has it agreed to receive and grade your work in the course should you continue in it.

After considering this and other emails, on October 17 the student wrote a memo to me in which he agreed to complete his focus group with members of his learning group. In conclusion he stated, "I thank you for the way you have handled this request, and I look forward to continuing in this course."

On October 18 I received a confidential letter from Dean Singer in which he wrote, "I am writing as Dean of the Faculty of Liberal Arts and Professional Studies to require that you respect the Faculty's legal obligation to accommodate the religious practice of X." It was the Dean's opinion that, "X's non-participation in group work will in no way have 'substantial impact' on the experience or human rights of other students in the class and accordingly the OHRC policy on competing rights is not engaged." It should be noted that no evidence was given for this statement. As will be shown later, there is evidence that such a decision would have an impact on female students in the class. Indeed, a final comment of the Dean provided tacit recognition of this possibility. He wrote that, "It is particularly important, especially as you are concerned about the course experience of our female students, that other students in 2030.60B are not made

aware of the accommodation.” As well as suggesting a negative impact on female students of the accommodation decision, this restriction is being challenged by YUFA as a violation of my academic freedom.

In part as a response to the Dean’s letter, I thought it prudent to obtain some expert opinion on possible religious justifications for excusing the student from interactions with females. On the basis of the student’s name and the nature of the request for accommodation, I and some colleagues hypothesized that he was either an Orthodox Jew or a Muslim. As a result, I contacted one Judaic scholar and two scholars of Islam at York and asked their opinions of the requested accommodation. After consulting with a rabbi, the Judaic scholar, in a telephone conversation, remarked that she and the rabbi with whom she had consulted thought that it would be legitimate for an Orthodox Jew to complete a focus group with women in attendance.

The responses of the Islamic scholars were similar. In an email of October 21 one simply remarked, “Unless he is asked to be physical with a female student, which I assume he isn't, there is absolutely no justification for not interacting with females in public space.” The other offered more detailed comments. On October 21 she wrote that:

Indeed, some conservative groups of Muslims these days (still) propagate gender segregation in all spaces, not only in the mosque where such divide represents a norm. The rationale for such interpretation is derived from certain primary religious sources which instruct Muslim males not to interact with Muslim females unless they are their relatives (sisters, etc.) Hence, strictly speaking, there is a basis for such request. On the other hand, someone who supports that kind of interpretation is unlikely to come to a secular, public university with a diverse student population, such as York University. Will the next step be a request for 'male' spaces? Should we grant such students the right to refuse to interact with female teachers?

I take pride in all wonderful work that our university has done to accommodate our students, including the right to space(s) for prayers and time for celebration of religious holidays. But our discourse is public, and by definition secular and I think that our students have to understand the implications of joining our vibrant academic community. As a teacher, I would refuse to say to my female students that they are excluded from certain group projects because of their sexual identity. In other words, wouldn't accommodation of such kind be also a discrimination of another kind?

On the basis of these opinions and the student’s agreement to complete the assignment, I wrote the following to the Dean on October 22:

You could not have known that I have had a number of communications with X about his request for religious reasons to be excused from public interactions with females in sociology 2030. On October 17, in response to his hearing of departmental policy, he wrote that:

"I will respect the final decision, and do my best to accommodate it. I thank you for the way you have handled this request, and I look forward to continuing in this course."

In a communication on October 22 he stated:

"I cannot expect that everything will perfectly suit what I would consider an ideal situation."

To me, these statements suggest several things.

First, rather than being a religious essential, not having to interact with females in public may be a 'nice to have'.

Second, X is satisfied with the way in which his request has been handled. He does not feel that he has been given short shrift. (All of our communications have been professional and polite.)

Third, despite the Vice Dean's offer of a full course refund, X wants to remain in the course. Indeed, in other communications he has expressed how much he likes the course.

Fourth, X is open to reasoned arguments.

Fifth, in view of X's comments, there is no need for an accommodation.

On October 29 the Dean wrote a confidential reply to my communication. In it he said:

Although there is new material in your note chiefly concerning X's acquiescence, that reluctant agreement does not materially affect the university's obligation to accommodate. Thus I stand by the terms articulated in My October 18 letter.

On November 4 I wrote to the Dean asking for further clarification of the specific provisions of the OHRC on which he was basing his decisions. He replied on November 18; however, in the sources he cited, no reference was made to the potentially competing rights of, in this case, females who might be affected by the accommodation. As a result, in an email on November 20, I said, "I would appreciate knowing why the rights of female students were not considered in your decision, and the sections of relevant documents that could be used to justify their non-consideration."

His response to this query on November 25 is very important. In another confidential letter he wrote:

I am unpersuaded that it is even arguable that the non-participation of this one male student in group work affects in any way any other student's human rights. Even assuming that it did, as I indicated in my October 18 letter, the effect does not, *in my opinion*, qualify as a 'substantial impact' on any other student's rights.

Despite my request, the Dean did not identify "the sections of relevant documents that could be used to justify their [females'] non-consideration."

From this letter I conclude that it is the Dean's *opinion* that the requested accommodation would have no substantial impact on the human rights of others in the class. He does not provide evidence for this belief. Also note that earlier one of the Vice Dean's criteria for granting an accommodation was that it did not detract from the experience of others in the class.

In order to test the way in which granting an accommodation of the nature being requested would be regarded by other students in the class, in another of my classes, I conducted a survey via Moodle in which I described the phenomenon of competing rights under the OHRC. After the description I presented students with the following scenario:

A recent case in an anthropology class in a Canadian university can be used to illustrate this point [competing rights]. In this case students were divided into groups to catalog artifacts (bones, pottery, etc.) found at an archeological site. Most of the students in the class were female.

For religious reasons a male in the class asked that he be given a different assignment because he did not want to interact publicly with women in a group situation.

- (1) What do you think are the human rights issues in this situation? Please explain.
- (2) Do you think that the male student should be allowed to complete a substitute assignment?
 - (2a) Please explain your answer.
- (3) If the male student was not allowed to complete a different assignment do you think that he would be a victim of discrimination based on religion?
 - (3a) Please explain your answer.
- (4) If the male student was allowed to complete a different assignment do you think that the females in the class would be victims of discrimination based on their sex?
 - (4a) Please explain your answer.
- (5) ANSWER ONLY IF YOU ARE FEMALE: If you were a member of the class and found out that a male student because of his religious beliefs was able to obtain an assignment so that he would not have to interact with females in the class, how would you feel?
- (6) What is your sex?
- (7) Please feel free to add any other comments.

A full report of the results is available on request. For current purposes, it is sufficient to present the results of 5), “If you were a member of the class and found out that a male student because of his religious beliefs was able to obtain an assignment so that he would not have to interact with females in the class, how would you feel?”

When analyzing answers to this question it became apparent that the best way to categorize responses was in terms of their revealing either anger over, or acceptance of, a decision to grant a substitute assignment.

In some ways this may be the most important section of the analysis. It indicates that were the male to be granted a substitute assignment there would be ‘collateral damage’ among female students. Many females in the class feel that his accommodation would be granted at their expense.

Comments indicating anger include the following. “I would be outraged,” one student wrote. “I would be so angry and would make sure that I informed the public of such nonsense.” The student adds that, “I would also bring up the issue of how women might feel about men. For example: ‘Men are known to sexually harass females, therefore I will not participate in any group work that a male is involved in within this class, I expect to be placed with only females.’ Silly, right? This situation is the exact same. Absolute nonsense.”

Another student comments that, “I would feel very angry just because I would feel that I am not ‘good enough’ to work with and I would feel discriminated.” Similar sentiments are found among other students. “Personally, I would feel very negative toward this male, and I would feel very discriminated,” a female student wrote. “I would not only feel discriminated but also would feel there is a sort of favoritism going on,” was the comment of another student. “I would be concerned about 1) how the university arrived at this decision and 2) the university’s commitment to human rights,” was another comment. Yet another student wrote that, “I would be a little offended, like he thought I was beneath his presence because I am a female.”

In other instances students expressed their anger and linked it to broader concerns. For example, a student fumed that, “I would feel very pissed off because everyone can say they feel discriminated against for any given reason. In this situation the male student got exempt from it, what about down the road when he gets a job? Does he still get exempt from projects because he cannot associate with the opposite gender?” This student pointed out that, “we live in a Canadian society that even though we are multicultural you have to embrace the country that you currently live in. By all means I’m not saying to change your culture and forget about your values, but just simply be able to act reasonably and be able to find a middle ground.”

Likely this student would have agreed with another who wrote that, “many people believe that their religion legitimizes discrimination based on gender, race, class, sexual orientation, etc. Would the right to manifest religion in practice always come before the right to gender equality?

What if the male student asked that the women be seated at the back of the class or on the other side of a partition so that he would not have to see them?”

On the same theme, a student wrote, “I would feel grossly offended and wonder what’s next for us as a female and find out the logics behind it and I can bet it just [shows] how their religion looks on women. We are ‘inferior’ and of no meaning or value.” She continues her argument by pointing out that, “we continue to see in society more and more groups are imposing their religious beliefs down our throat wanting us to accept it. It is not right.”

The foregoing indicates that, contrary to the Dean’s opinion, the granting of the accommodation likely would be seen by many females in the class as having a substantial impact on their rights. In addition, inconsistent with one of the principles articulated by the Vice Dean, the accommodation would negatively affect the course experience of others in the class. For these reasons the granting of the accommodation should be viewed as infringing on the rights of females in the class and should not be granted.

Assessment

When asked to identify the provisions of the OHRC justifying the granting of an accommodation for religious reasons, in his letter of November 18, the Dean was clear and made reference to specific legislation. By contrast, when asked why the rights of females were not taken into consideration, in a letter of November 25, the Dean only expressed an opinion. He wrote that:

I am unpersuaded that it is even arguable that the non-participation of this one male student in group work affects in any way any other student’s human rights. Even assuming that it did, as I indicated in my October 18 letter, the effect does not, *in my opinion*, qualify as a ‘substantial impact’ on any other student’s rights.

Note that the Dean gives no evidence for his opinion.

I hold a different view. I believe that the granting of the accommodation would violate the secular rights of female students to be treated in the same way as other students. As I pointed out to the Vice Dean in my letter of September 27:

Treating Mr. X equally would mean that, like other students, he is expected to interact with the female students in his group. Treating the female students equally means that they, like other students, could expect to interact with other students independent of their sex, sexual orientation, religion, race, and so on.

From the survey I conducted in another course it seems that many female students would agree with me. Not only would certain females believe that their rights would be violated were the accommodation granted; but also, they would feel belittled and angry. Some even talked of legal action and involving the media. In his letter of November 25, in reference to the results of the

survey, the Dean wrote that, “I am also not persuaded that other students’ political views on the subject are either a relevant or an appropriate consideration.” This is puzzling. Presumably the opinions of the student requesting the accommodation were not viewed as ‘political’ and were used in identifying his religious rights and determining if they were violated.

For the sake of argument, let’s assume that the Dean is correct – that the opinions of females are not relevant to the issue under consideration. They nonetheless indicate that an accommodation of the nature requested likely would seriously and negatively affect the course experience of females in the class. Remember that in his letter of October 4 the Vice Dean indicated that, “the accommodation ought in no way to interfere with the experience of other students in the class.” Clearly, even if the Dean were correct and the granting of the accommodation would not seriously affect the rights of females, it nonetheless would negatively affect their class experience. On these grounds alone the accommodation should be denied.

What we have is a situation in which a judgement was made that the requested accommodation did not affect the rights of females. This judgement should be reversed. Part of the process of reversal might involve a wide adoption of the resolution passed by the sociology department:

Whereas it is recognized that York recognizes diversity, be it resolved that academic accommodations for students will not be made if they contribute to material or symbolic marginalizations of other students, faculty or teaching assistants.

Were this to be done, rather than leaving a determination of whether or not an accommodation infringes the rights of others to the administration, a decision could be made by a committee comprised of a cross section of the professoriate. A precedent for this type of decision-making is provided by the research ethics committee.

At the time of writing the Dean still expects me to accommodate.