

## Annual Report 2015



LOWI Report on the Year 2015

Amsterdam, February 2016

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*Pronken met andermans veren (kleurets) / The bird in borrowed feathers (colour etching), J.W.M. van der Meer, 2014*

## Foreword

Established on 1 May 2003, the Netherlands Board on Research Integrity (LOWI) is a joint initiative of the Royal Netherlands Academy of Arts and Sciences (KNAW), the Association of Universities in the Netherlands (VSNU), and the Netherlands Organisation for Scientific Research (NWO).

Since 1 January 2014, the LOWI has issued an annual report covering the previous year. The present report describes events and decisions taken in 2015.

There is one opinion that I would already like to address in this foreword: opinion 2015-02, which attracted a great deal of attention. It concerned a possible violation of the principles of research integrity in which an anonymous complainant complained to the Board of a LOWI-affiliated institution about possible plagiarism.

In essence, the LOWI deems it undesirable for a complainant to maintain complete anonymity – meaning that no one knows the identity of the individual involved – in cases concerning possible violations of the principles of research integrity. This is in line with the Memorandum on Scientific Integrity 2001 [*Notitie Wetenschappelijke Integriteit 2001*], which states that ‘anonymous complaints are not (and cannot be) considered’.

In so far as an Institution’s complaint procedure allows for anonymous complaints, the LOWI considers that the Institution’s Board must proceed with great caution when deciding to review completely anonymous complaints. The requirements of transparency, the right of defence, and the right of both parties to be heard are naturally prohibitive factors for such complaints. The interests of a complainant who wishes to remain anonymous can best be served by a satisfactory whistleblowers system and by the duty of confidentiality; in this specific case, the Accused and/or the Scientific Integrity Committee would not know the name of the anonymous complainant but the Board would. This way, the anonymous complainant and the other parties involved can be held equally accountable for complying with the duty of confidentiality.

The LOWI ruled in an earlier opinion that when plagiarism is not obvious from the nature and length of the copied texts, the Netherlands Code of Conduct for Scientific Practice [*Nederlandse Gedragscode Wetenschapsbeoefening*] offers few if any guidelines for characterising the copying of texts and results as plagiarism and thus as a violation of research integrity (see also LOWI opinion 2014-10). That is because the Code of Conduct merely describes best practices.

In earlier opinions, the LOWI ruled that plagiarism does not include:

- (i) copying a small number of words verbatim that are exclusively descriptive or factual in nature;
- (ii) general, purely factual descriptions of a ruling or text that leave little scope for deviation, so that certain facts must be conveyed in similar terms; and
- (iii) allusions to sources made in the text in such a manner that it is clear to readers that texts have been taken from those sources (see LOWI opinion 2014-08).

In assessing whether a certain text fragment can be considered an instance of plagiarism that violates the principles of research integrity, it is necessary to (1) first examine whether a text has been copied verbatim (word-for-word) or conceptually without reference being made to the sources, either in the text itself or in some other manner; and (2) determine whether this action can be characterised as plagiarism based on the circumstances of the case. The determining factors in

this connection are the context in which the action has taken place and the relevant individual's intention (although the assessment should not be limited to these factors).

The reference to intention in opinion 2015-02 raised many questions. Some interpreted it to mean that copying text verbatim and/or conceptually without attribution should not be characterised as plagiarism if there was no intention to commit plagiarism. That is not what the opinion says, however. Intention is merely an additional factor that can help to identify plagiarism, not rule it out. The wording of the opinion is as follows: 'To arrive at the conclusion that plagiarism has been committed...one significant factor may be that the relevant person intended to... "strut with borrowed feathers"'. That intention can (often) also be discerned implicitly from (1) the scale of the plagiarism (see LOWI opinions 2008-1 and 2014-10, cases in which the authors had translated large blocks of text literally from another language without referring to the source in the text itself or in any other manner); or (2) the copying of sections of texts (see LOWI opinion 2014-10) that include the same references to secondary sources'.

Nevertheless, the questions that opinion 2015-2 raised in both respects – anonymous complaint and plagiarism – indicate that the upcoming revision of the Netherlands Code of Conduct for Scientific Practice should not merely describe best practices but also give a precise definition of plagiarism and of the violation of research integrity in general.

Finally, in 2015 Prof. J. Hartog stepped down from the LOWI after completing the maximum term of nine years (3 three-year terms). The LOWI is grateful to Joop Hartog for his valuable and untiring contribution. His persuasive input added considerably to the quality of our opinions.

Prof. R. Fernhout, LOWI Chairperson

## 1. Composition of the LOWI in 2015

The LOWI has six members, including its Chairperson and Deputy Chairperson.

Members are appointed for a three-year term by the LOWI's founders, with an option to extend their appointment for another two terms of three years each. Prof. R. Fernhout became the LOWI Chairperson on 1 December 2014. Prof. E.H. Hondius has served as Deputy Chairperson since 1 April 2008. In 2015, the other members of the LOWI were Prof. L. Lechner (since 1 May 2015), Prof. J.W.M. van der Meer (since 1 September 2012), Prof. J. Reedijk (since 1 September 2012) and Prof. I.E.C. Sommer (since 1 April 2014).

The members represent various scientific/scholarly disciplines and subdisciplines, specifically administrative law (Prof. Fernhout); comparative (European) private law (Prof. Hondius); health psychology (Prof. Lechner); internal medicine (Prof. Van der Meer); inorganic chemistry (Prof. Reedijk); and psychiatry (Prof. Sommer).

The LOWI has had an Official Secretary since it was founded. In 2015, H.M.L. Frons served in this capacity, with Dr E.G. van Arkel serving as Deputy Official Secretary. They were assisted by Ms. A. Muller. The LOWI holds its meetings, hearings and informative meetings at the Trippenhuys Building, Kloveniersburgwal 29 in Amsterdam.

## 2. LOWI's status

The LOWI operates independently of its founders and all other institutions.

In 2015, the District Court of Amsterdam once again reviewed the status of the LOWI under administrative law and ruled that the LOWI is not an administrative body within the meaning of the General Administrative Law Act [*Algemene wet bestuursrecht*] (ECLI:NL:RBAMS:2015:4472). Among other things, this means that the National Ombudsman is no longer authorised to review any complaints about the LOWI (see also report 2015/140) and that the Government Information (Public Access) Act [*Wet openbaarheid van bestuur*] and General Administrative Law Act do not apply.

## 3. LOWI tasks and scope of work

### *Opinions*

The LOWI's task is to advise the Boards of affiliated Institutions about their decisions (or preliminary decisions) concerning alleged violations of the principles of research integrity. As a rule, the Board takes such a decision in response to a complaint. Those involved in the complaint procedure before the Board (i.e. the Complainant and the Accused) may approach the LOWI after the procedure has concluded and petition the LOWI to rule on the Board's decision or preliminary decision. Such petitions involve the following parties: the Petitioner or Petitioners, the Board, and any Interested Party or Parties.

The LOWI may explain the procedure as described in the LOWI Regulations and the LOWI Procedures at the request of one of the Parties. The LOWI does *not* explain the possible outcome of a procedure brought before it.

The science policy document *Vision for Science 2025* [*Wetenschapsvisie 2025*] raises the possibility of extending the LOWI's tasks. This document was submitted to the Dutch House of Representatives by

the Minister of Education, Culture and Science, Dr Jet Bussemaker, on 25 November 2014. Section 2.3 of the document states that the Government is pleased that a growing number of institutions have joined the LOWI, and that, given the LOWI's position and purpose, the Government will consider giving it further support, for example by extending and creating a statutory basis for its role and competences.

#### *Knowledge transfer*

In 2015, the LOWI's Chairperson represented the LOWI by participating in various forms of knowledge transfer concerning research integrity. At the invitation of the Royal Academy, Prof. Fernhout addressed the Seventh Hendrik Muller Summer Seminar (24 June 2015). He was also involved in the course 'Maintaining Scientific Integrity in Present Day Academic Reality', organised by Utrecht University's Graduate School of Geosciences (30 October 2015). In addition, Prof. I.E.C. Sommer spoke on behalf of the LOWI at the Invitational Conference (13 March 2015) concerning the programme 'Fostering Responsible Conduct of Research', organised by the Netherlands Organisation for Health Research and Development (ZonMw).

#### *LOWI International*

The LOWI is a member of the European Network of Research Integrity Offices (ENRIO, see: [www.enrio.eu](http://www.enrio.eu)). The LOWI also provides information about its history and its Regulations and/or Procedures to countries outside this network. In 2015, the LOWI had informative meetings in that regard with a member of the Australian Academy of Science and an Australian MP.

#### **4. LOWI-affiliated institutions**

In 2003, the affiliates of the LOWI consisted of its founders, i.e. the Royal Academy and its institutes, the NWO (Netherlands Organisation for Scientific Research) and its institutes, and the VSNU (Association of Universities in the Netherlands, formed by the fourteen Dutch research universities and their university medical centres).

In 2004, Sanquin Blood Supply also joined the LOWI.

In 2014, the following organisations joined the LOWI (listed in chronological order): University of Humanistic Studies, National Institute for Public Health and the Environment (RIVM), DLO Foundation, Netherlands Institute for Health Services Research (NIVEL), Theological University of Apeldoorn (TUA), Theological University in Kampen (TU Kampen) and Protestant Theological University (PThU).

Another organisation joined the LOWI in 2015, namely the Amsterdam School of Real Estate (ASRE).

#### **5. Website and press**

The LOWI's website ([www.lowi.nl](http://www.lowi.nl)) was expanded and updated in 2015. Full-length versions of the LOWI's opinions are placed on the website (in anonymised form), along with decisions concerning any complaints that it has received about its work. Since 2015, the LOWI has also published summaries of its opinions on its website. The summaries also report the final decisions taken by the Boards after receiving the LOWI's opinions. The English version of the website was also expanded in 2015 and publishes translations of the summarised opinions.

The press once again contacted the LOWI on a regular basis in 2015. The LOWI never comments on whether it has reviewed or is reviewing a particular matter, either to the press or to other parties. Those interested may consult the anonymised opinions on the LOWI website.

## 6. Overview of petitions submitted and settled in 2015

### *Statistics: number of petitions pending in 2015*

In 2015, the LOWI had a total of **25** petitions awaiting settlement or further consideration.

The breakdown was as follows:

- 2015 began with a backlog of ten petitions submitted and considered in 2014 but not yet settled;
- In addition, the LOWI received a further 15 petitions in the course of the year.

### *Statistics: number of opinions and decisions issued*

In 2015, the LOWI settled a total of **15** petitions.

The breakdown was as follows:

- The LOWI considered the substance of 11 petitions and issued opinions concerning their substance to the relevant Board. Because two of these petitions came from the same Petitioner and concerned the same matter, the LOWI combined its rulings on the two petitions into a single opinion. That means that it issued ten opinions on the substance of a case;
- The LOWI did not consider the substance of four petitions (further) because they did not comply with the submission requirements or concerned a repeat petition. The LOWI issued rulings on these petitions in the form of either an opinion or a decision.

### *Statistics: number of Institutions involved*

The 15 petitions settled by the LOWI concerned decisions by the Boards of **nine** Institutions.

The breakdown was as follows:

- |                            |                                   |
|----------------------------|-----------------------------------|
| - Erasmus Medical Centre   | 1X (Note: unpublished)            |
| - NWO                      | 1X                                |
| - DLO                      | 1X (Note: concerns two petitions) |
| - Tilburg University       | 1X                                |
| - University of Leiden     | 1X                                |
| - Utrecht University       | 3X                                |
| - University of Amsterdam  | 2X (Note: one unpublished)        |
| - VU University            | 2X                                |
| - Wageningen UR/University | 2X                                |

### *Statistics: number of published opinions and decisions*

The 15 petitions settled by the LOWI resulted in **12** publications on the LOWI website.

The breakdown was as follows:

- The LOWI considered the substance of 11 petitions, resulting in ten opinions on the substance of the case;

- The LOWI did not consider the substance of four petitions (further) because they did not comply with the admissibility requirements or concerned a repeat petition;
- For information purposes, the LOWI published two of the four aforementioned petitions (2015-05 and 2015-08).

*Statistics: number of expert opinions*

In the case of two of the petitions settled in 2015, the LOWI consulted two external experts each. In one of these procedures, the Board had also consulted an expert at an earlier stage.

*Statistics: number of hearings and informative meetings*

In 2015, the LOWI presided over seven hearings and two informative meetings. In the other cases, it based its conclusions on a review of the relevant documents.

*Statistics: length of LOWI procedure*

The LOWI's procedures took between two (minimum) and 54 weeks (maximum), from receipt of the petition to the relevant opinion or decision. On average, procedures took approximately **25 weeks**. A number of procedures took longer because experts had to be called in, the Parties were given more time to respond, or it was a holiday period.

*Substance: rulings and opinions, final decision by the Board*

A petition submitted to the LOWI involves a request to review a Board's preliminary decision and to advise the Board as to its final decision.

The following is important in that regard. When the LOWI rules that a petition **will not be considered** or is **unfounded**, then it does not follow up its ruling by advising the Board to revise its preliminary decision. When the LOWI rules that a petition is **well founded** (or partly well founded), then it generally follows up its ruling by advising the Board to revise its preliminary decision.

The Board then decides whether or not to follow the LOWI's advice. In accordance with the LOWI Regulations, the Board makes a copy of its final decision available to the LOWI. This way, the LOWI can monitor the effectiveness of its opinions. In a few cases, the LOWI issued more general recommendations in addition to its opinion concerning a specific Board decision, e.g. to amend the relevant Complaint Procedure to reflect the provisions of the General Administrative Law Act. Because Boards are not obliged to reveal to the LOWI whether they are following such recommendations, the LOWI is unable to report on them.

Below is a general summary of the LOWI's rulings and opinions in 2015 and an indication of whether the relevant Boards did or did not act in line with its opinions. If the LOWI did not consider a petition, then it has *either* not issued an opinion on the matter *or* it has advised the Board to uphold its preliminary ruling in its final decision.

The petition was a repeat petition with no *nova* and **was therefore not considered**: 2015-05 and 2015-08

The petition involved a case in which proceedings under administrative law were possible and **was therefore not considered**: unpublished



The petition was submitted too late without there being extenuating circumstances and **was therefore not considered**: unpublished

The petition was ruled **manifestly unfounded**. The LOWI advised the Board to uphold its preliminary ruling in its final decision. The Board adopted this opinion: 2015-10

The petition was ruled **unfounded**. The LOWI advised the Board to uphold its preliminary ruling in its final decision. The Board adopted this opinion: 2015-01, 2015-04, 2015-06 and 2015-11

The petition was declared **well founded insofar as it concerned the length of the complaint procedure**; the remainder of the petition was ruled unfounded. The LOWI advised the Board to uphold its preliminary ruling in its final decision. The Board adopted this opinion: 2015-12

The petition was declared **partly well founded**. The LOWI advised the Board to replace its preliminary ruling of plagiarism by a ruling of negligent conduct and to rule that the Interested Party had violated scientific integrity by acting with negligence. The LOWI also advised the Board to impose a different sanction on the Interested Party than the one proposed. The Board adopted this opinion: 2015-09

The petition was declared **partly well founded**. The LOWI advised the Board to replace its ruling of plagiarism by a ruling of negligent conduct and to rule that the Interested Parties had not violated scientific integrity by this action. The LOWI also advised the Board against imposing a sanction on the Interested Parties. The Board adopted the LOWI's opinion, with the exception of the LOWI's comment concerning the careless manner in which the Board had publicised the case: 2015-02

The two petitions were declared partly **well founded**. The LOWI advised the Board to reconsider the admissibility of the various subsidiary complaints, with the exception of the first subsidiary complaint, and to present reasons for its assessment. The Board adopted this opinion by asking the CWI to reconsider the complaints specified by the LOWI: 2015-03

The petition was declared partly **well founded**. The LOWI advised the Board to reconsider the complaint and to assess the Interested Party's action in the light of the scientific integrity rules as defined in the Netherlands Code of Conduct for Scientific Integrity. The Board adopted this opinion by reconsidering the complaint: 2015-07

*Substance: the subjects of the petitions*

Petitions submitted to the LOWI are usually highly detailed in nature. In addition, petitions not only ask the LOWI to consider matters related to research integrity but also often claim that procedural errors were committed in the complaint procedure before the Board. In that context, the petitions settled in 2015 dealt with the following subjects: statute of limitations, entirely anonymous complaints, the CWI's representation of a complaint, the right to be heard in a complaint procedure, (arguments supporting) expert opinions, arguments supporting a preliminary decision, and the length of the complaint procedure. If the LOWI rules that a complaint procedure does not comply with the relevant requirements, this is not also automatically a ruling on the research integrity of the researcher who is the subject of the complaint procedure.

The following list of published opinions identifies the relevant research integrity issue in each case.

- 2015-01: about a researcher's recommendations to the district court and whether this should be counted as scientific practice;
- 2015-02: about the characterisation of plagiarism or negligent conduct and whether a ruling of negligent conduct implies a ruling that research integrity principles have been violated;
- 2015-03: about the confidentiality of a draft report, its relevance for the applicability of the Netherlands Code of Conduct for Scientific Integrity, and whether publication by persons other than an author or authors should be blamed on the author(s);
- 2015-04: about the distinction between scientific integrity and scientific controversy and how to deal with continual criticism by third parties;
- 2015-05: about whether a document whose substance was reviewed in an earlier procedure should be reviewed again if there are no *nova*;
- 2015-06: about the distinction between scientific integrity and scientific controversy;
- 2015-07: about the distinction between a scientific publication and a popular science publication and which standards should be applied to a publication;
- 2015-08: about whether to reconsider a previously rejected petition to withdraw an alleged unscrupulous report and article;
- 2015-09: about justifying the characterisation of plagiarism, the relevance of the research climate in the discipline concerned, and supervision of the Interested Party, and about the violation of research integrity by negligent conduct and what sanction is suitable in such a case;
- 2015-10: about whether a complaint declared inadmissible in a previous procedure can lead to a new complaint procedure;
- 2015-11: about (cosmetic) manipulation of images in scientific publications, whether or not to submit raw data, and the scope of the duty of confidentiality;
- 2015-12: about whether assessments of research proposals count as scientific practice, the scrupulousness of such assessments, and the relationship between the responsibility of the individual committee members and the collective responsibility of the committee.

## **7. Procedures in which the LOWI became involved**

### *Petitions pursuant to the Government Information (Public Access) Act*

The LOWI received one petition under the Act in 2014. The judicial proceedings arising from its rejection of this petition concluded in 2015 when the District Court of Amsterdam (see page 5) ruled that the LOWI is not an administrative body within the meaning of the General Administrative Law Act. This means that the court was not competent to rule on the dispute.

The ruling also means that the Government Information (Public Access) Act and General Administrative Law Act do not apply to the LOWI and that the National Ombudsman is not authorised to review any complaints pertaining to it. To offer Parties the necessary guarantees, the LOWI will apply the General Administrative Law Act (Chapter 9) and the Government Information (Public Access) Act analogously.

### *Complaints about the LOWI: the National Ombudsman*

Two complaints about the LOWI submitted to the National Ombudsman in 2014 were pending in 2015. With respect to one of the complaints, the National Ombudsman asked the LOWI to cooperate voluntarily in the investigation, which was nearing completion. The LOWI agreed to this. The

National Ombudsman then published report 2015/140 on 22 September 2015. In that report, the National Ombudsman confirmed that he was not authorised to review complaints about the LOWI. The National Ombudsman also declared the complaint about the LOWI procedure well founded. In his report, he discussed the importance of informing all the parties involved adequately and of offering them a satisfactory array of procedural options. This led the LOWI to decide to apply the General Administrative Law Act (Chapter 9) by analogy.

*Complaints about the LOWI: the LOWI*

After the National Ombudsman had ruled on one complaint about the LOWI with the LOWI's consent, on 2 October 2015 he returned the second complaint to the LOWI for consideration. The LOWI then considered the complaint by applying Title 9.1 of the General Administrative Law Act analogously, heard the complainant, and investigated the complaint. The decision concerning the complaint was published (in anonymised form) on the LOWI's website.

**8. Summary table**

The table below presents the most relevant figures from section 6 of this report.

<b>2015</b>	
Total number of petitions pending:	25
Total number of petitions settled:	15
- ruling on submission requirements	4
- ruling on substance	11 (2 combined)
Total number of opinions/decisions issued:	14
- number of these published	12
Average length of procedure	25 weeks