

Summary of LOWI opinion 2016-08

The Petitioner complained about an open letter sent to national newspaper *NRC* that he believes does not live up to scientific standards. The open letter was signed by a number of persons. The Interested Party is one of those who signed it, and according to the Petitioner he is also the initiator. In his complaint, the Petitioner argued that the open letter deliberately provided incorrect information. The complaint contained a painstaking analysis of the open letter and a detailed explanation of the Petitioner's point of view.

The Research Integrity Committee (RIC) considered that the contents of the open letter were closely related to the subject of the Interested Party's appointment as professor and that the Interested Party presented himself as a scientist, so that he was bound by the rules of research integrity. The RIC based its ruling on the information known at the time of the open letter's publication and observed that the letter addressed two issues. The RIC considered that the Interested Party substantiated his views persuasively in the case of the first issue, and that the distinction between two different subjects and the intent of the signatories should have been clearer in the case of the second issue. In that sense, the publication could be deemed negligent, but without having violated the principles of research integrity. The controversy was sooner one involving a difference of opinion and position. It was not shown that the Interested Party applied methods or interpreted empirical results erroneously.

The Board declared the complaint unfounded, in line with the RIC's recommendation. The Petitioner then submitted a request to the LOWI.

The Petitioner's most relevant objections are described below:

- The RIC judged the Interested Party's only verifiable source as a convincing argument, whereas this source in fact refutes the Interested Party's information. The RIC did not interpret the complaint correctly and also interpreted the open letter differently and incorrectly.
- The RIC neglected to address the incorrectly applied methods listed in the complaint, did not consider the major portion of the complaint, and did not investigate the substance of the matter. With regard to the two assertions in the complaint that it did address, it did not judge them by the criteria of the Complaints Procedure.
- The right of both parties to be heard has been violated. For example, the Petitioner was not permitted to submit a written response to the statement of defence, and as a result the hearing was largely taken up with a discussion of noise in the defence. The Petitioner submitted documents revealing untruths in the defence, but the RIC did not review these.
- The proceedings exceeded the prescribed term.
- The Petitioner explained at length why he considers the contents of the open letter incorrect and asserted that the Interested Party – like the RIC – knew or should have known that the open letter misrepresented matters. The complaint is emphatically not about opinions but about a lack of integrity in the dissemination of scientific knowledge.

Below are the most relevant considerations in the LOWI's opinion:

- The Petitioner has submitted a large number of documents in the proceedings. The RIC explained in its ruling that it had disregarded a number of documents either because they had only a tangential relationship to the complaint or because they contained information stemming from after publication of the open letter. The LOWI does not consider this unreasonable.
- The LOWI believes that the treatment of complaints concerning research integrity is an internal affair, and that the Board – which is an administrative body within the meaning of Article 1:1 of the General Administrative Law Act (Awb) – must adhere to the provisions of Title 9.1 of the Awb in addition to the Complaints Procedure. Neither of these indicates that a Complainant must be permitted to respond in writing to a statement of defence.
- By giving the Petitioner and the Interested Party the chance to be heard and by drawing up the minutes of this hearing, the RIC satisfied the requirements of Article 9:10 of the Awb. Hearing the parties in each other's presence, so that each was able to respond to the other's assertions, further complies with the Complaints Procedure.
- The fact that the RIC did not adopt the Petitioner's point of view does not mean that the right of both parties to be heard has been infringed.
- The duration of the complaints proceedings contravened both the Complaints Procedure and Article 9:11 of the Awb. The complaint is therefore well-founded on this point.
- Before judging whether or not a scientist's actions adhere to the rules of scientific integrity, we must first determine whether those rules are even applicable to the actions in question. In this connection, the RIC concluded that the rules of research integrity do apply to the Interested Party's actions, but the LOWI disagrees with the RIC on this point.
- Various earlier opinions issued by the LOWI invariably indicate that under certain circumstances, 'extracurricular activities' may also fall within the scope of the Netherlands Code of Conduct for Academic Practice, specifically when these activities can be qualified as scientific practice. The mere fact that actions are undertaken by a scientist is not enough to justify reviewing them under the Netherlands Code of Conduct for Academic Practice. More is needed. The fact that the Interested Party signed the open letter with his position and academic titles is therefore not of conclusive importance.
- The issue is whether the open letter in question can be equated with scientific research (or education) at the university, given its nature and contents. Only then would there be reason and leeway to review its compliance with the Netherlands Code of Conduct for Academic Practice.
- The open letter in question was drafted out of concern about a specific subject and encompasses a call to desist from certain decision-making. The open letter describes the situation as the signatories see it. The signatories are attempting to influence specific decision-making in this manner.
- This cannot be equated with the formulation of scientific conclusions based on scientific research. Nothing in this letter points to (or claims that) scientific research has been conducted: no scientific problem has been stated, no reference is made to earlier research results, and there was clearly no intention of publishing the letter as a work of science in a scientific journal. The letter neither describes a research process nor presents a methodology.

- The open letter in question fails to display the essential features of a scientific publication or research in other ways as well: it does not address the scientific forum or a readership of knowledgeable laypersons in order to draw attention to scientific findings, and nothing in the letter indicates that it is intended to help disseminate scientific knowledge.
- It is sooner a public plea concerning a specific matter. It is reasonable to expect that readers of this open letter will not view it as a scientific publication with the attendant scientific nuances, but rather as a publication meant to highlight the signatories' opinions and spark public debate. The fact that the open letter has been signed by a few scientists and that the online version has some footnotes is not enough to qualify it as scientific practice in the end.
- Of course, it is possible to discuss whether or not the opinion expressed by the signatories of the open letter is correct. However, the designated platform for that discussion is the newspaper in which the open letter was published. The LOWI is neither equipped nor authorised to act as an arbitrator in scientific controversies, and that is even more the case for non-scientific differences of opinion.
- The LOWI believes that this open letter cannot be qualified as scientific practice and should therefore not be subject to review under the Netherlands Code of Conduct for Academic Practice. In that respect, the LOWI disagrees with the RIC's ruling, which does recommend such a review. Since the Board has declared the complaint invalid, there is no reason to recommend that it reconsider its ruling. The LOWI does, however, advise the Board to change the reason for declaring the complaint unfounded in its final decision.

The LOWI considers that the request is well-founded in so far as it concerns the length of the complaints proceedings. The LOWI has advised the Board to amend the Complaints Procedure to adhere to the terms prescribed by the Awb. In all other aspects, the petition is unfounded. The LOWI has advised the Board to uphold its ruling that the complaint is unfounded in its final decision, but to give as reason that the open letter does not constitute scientific practice.

On 6 September 2016, the Board issued a decision in line with the LOWI's opinion.