

## Summary of LOWI opinion 2016-09

The Petitioner complained about an article by the Interested Parties and two other authors in which the Petitioner's name was, in his opinion, erroneously omitted as a co-author. The Petitioner argued that he was the first to make the discovery on which the article was (to some extent) based, and that he also described this discovery in his thesis.

The Research Integrity Committee (RIC) called in two external experts to advise it. In its view, it was important to establish whether the findings set out in the thesis were so valuable to the article that it was evident, given the customary rules in the relevant discipline, that the Petitioner should have been credited as a co-author, and that the Interested Parties nevertheless deliberately ignored his contribution. Since the experts disagreed about whether the Petitioner should be credited as a co-author, it was not evident to the RIC whether such attribution should have been given. Qualifying this matter as a violation of the principles of research integrity was inappropriate, although it was negligent not to acknowledge the Petitioner's contribution as such in the article. It was also not shown that the Interested Parties deliberately ignored the Petitioner's contribution. The RIC advised declaring the complaint unfounded in so far as it referred to a violation of the principles of research integrity, and recommended asking the Interested Parties to rectify the article so that it did justice to the Petitioner's contribution.

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

The Petitioner's most relevant objections are described below:

- The RIC's recommendation does not reflect the opinion of Expert 2, for whom it is evident that the Petitioner should have been credited as a co-author. It should also be noted that Expert 1 was not against acknowledging co-authorship but only proposed seeking an alternative solution.
- Half of the article was based on the Petitioner's thesis. The Interested Parties made use of the Petitioner's discovery without referring to him. They elaborated on this discovery in the other half of the article, to which the Petitioner lays no claim.
- The Petitioner's discovery is not described in the two articles in which the Petitioner *is* credited as a co-author.
- The Petitioner passed on the information about his discovery to one of the two other authors, but that does not mean that his rights have lapsed. The (lead) author was the Petitioner's supervisor.

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

- The LOWI would first point out that the definition of 'duty of care' laid down in Article 1.4 of the Netherlands Code of Conduct for Academic Practice is very brief and that the explanatory notes do not elaborate it further. For reasons of (legal) uniformity and certainty, the LOWI will adhere to the line of argument that it has put forward consistently in previous opinions and not apply

the RIC's stricter, cumulative criteria. According to the LOWI's line of argument, an attribution of co-authorship is appropriate when a researcher has made a significant, scientific contribution to a publication.

- Regardless of the applicable criteria, the facts must be established before the Petitioner's claim can be assessed. The basic principle is that the facts should be established during the complaints proceedings. The main responsibility for this lies with the Board and the Complainant. In actual practice, however, it is the RIC, which has various investigative powers, that establishes the facts. The LOWI is not involved in complaints proceedings and should basically (be able to) trust that the process of gathering and establishing the facts has been scrupulous and exhaustive. In this case, however, that process was not exhaustive.
- It is not enough to establish the extent to which the Petitioner's thesis contributed to the article; we must also establish whether the Petitioner conducted the initial experiment, as he asserts (i.e. whether he made the discovery).
- To substantiate his claim, the Petitioner submitted a USB stick to the RIC, but the RIC did not examine the data on the USB stick. This is, however, a priority claim, which generally involves going back to the raw data, as only that data can demonstrate definitively whether or not the claim is justified. In addition, there was good reason to at least question the lead author of the article (the Petitioner's supervisor) and perhaps also the individual who conducted the subsequent experiments. This too was left undone.
- To speed things along and pursuant to Article 8.3 of the LOWI Regulations, the LOWI has itself investigated the facts. Based on the file, the informative interviews with the two other co-authors in addition to the Interested Parties, an examination of the Petitioner's USB stick, and the hearing attended by the parties involved, the LOWI has established the following facts.
- The Petitioner did not contribute to the article by writing portions of text, and the majority of the experiments for the article were carried out by someone else. However, the data on the USB stick shows that the Petitioner did perform the initial experiment. Since the lead author of the article was the Petitioner's supervisor, it is plausible that he knew this. In fact, the Petitioner's thesis also refers briefly to his discovery, with the comment that further research is needed.
- The Petitioner's contribution to the article consists of conceptualising, planning and conducting the first experiment that served as a basis for the subsequent work. The next question is whether this contribution qualifies as a significant contribution to the article.
- The LOWI regards the exhaustive and well-argued opinion of Expert 2 as important in this regard; this expert explained that the Petitioner's finding was seminal to the article. Expert 2 believes it can be argued that the Petitioner's first results, described as provisional, initiated and had a decisive influence on the follow-up research, and he believes that the results identified in the article can be described primarily as an optimisation of the Petitioner's initial finding. The LOWI believes that the Petitioner's discovery should be considered a significant contribution to the article. Its view is confirmed in the article itself, which claims that the finding is a notable one that has never before been described in the literature.

- According to the line of reasoning adhered to consistently in previous LOWI opinions, the Petitioner should have been credited as a co-author. The acknowledgement offered by the Interested Parties is inadequate.
- Does this opinion lead to the conclusion that the Interested Parties violated the principles of scientific integrity? It is, first of all, relevant that the Interested Parties did not write the first draft of the article and did not themselves propose which authors should be credited or in which order.
- The following is also important. To satisfy the requirement that an author be credited in a joint publication, it is necessary to know who made a contribution (significant or otherwise) to the publication. That is a responsibility that all the authors share. It seems that the Interested Parties often monitored the faculty's everyday affairs and the realization of scientific articles remotely, and that they were not, for example, informed as to when the outcome of the Petitioner's experiment became clear. The Interested Parties were too easy-going about the proposed selection of authors. The Interested Parties fell short in that respect, and as they are supervisors and senior co-authors of the article, the risk is theirs to bear.
- Since the Interested Parties evidently did not exercise enough control over the realization of the article and the Petitioner's name was omitted altogether, even though it was reasonable for him to be credited as a co-author, the Interested Parties can be said to be culpably negligent. There are, however, insufficient grounds for concluding that this negligence also qualifies as a violation of the principles of research integrity.

The LOWI believes that it was erroneous not to credit the Petitioner as a co-author and that the Interested Parties acted with culpable negligence by failing to monitor the realization of the article more closely. The LOWI has advised the Board to amend its final decision in line with this opinion and to ask the Interested Parties to rectify the article by adding the Petitioner to the list of co-authors.

In line with the LOWI's opinion, the Board issued a final decision on 14 November 2016 in which it urged all those involved to rectify the fact that the Petitioner was not credited as a co-author. The Board has asked the Interested Parties to report back to the Board on the steps they have already taken in that direction.