

Summary of LOWI opinion 2016-10

The Petitioner complained about two syllabi published by the Interested Parties. According to the Petitioner, source material was incorrectly referenced and the Petitioner's authorship had not been acknowledged. The Petitioner amended the syllabi, in part during his hours off, and the Interested Parties made use of his work in their versions. The Petitioner was unjustly accused of forcing the Interested Parties to rewrite the syllabi because he did not wish to hand over his files. The Petitioner was willing to make the files available, but only after being paid for his overtime.

The Research Integrity Committee (RIC) considered that the scope of the Netherlands Code of Conduct for Academic Practice could be interpreted broadly, and that it therefore applied – albeit not in full – to syllabi. In so far as it was possible to establish the Petitioner's contribution to the final versions of the syllabi, that contribution was so small that the matter could not be regarded as a violation of the principles of research integrity. Given the scale of the Petitioner's efforts, however, it was unreasonable to omit his name altogether. It would have been obvious to include Petitioner's name in an acknowledgement or an introduction. It would have also been clearer to describe the person whose name appears with each chapter as the instructor for that class. It was negligent not to do so. 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:

- A number of years ago, the chairperson of the RIC expressed a negative opinion of the Petitioner's dissertation. It would have been more appropriate for him to have withdrawn as chairperson in the matter. The RIC forgot to invite the Petitioner to the hearing, making it impossible for him to respond to the Interested Parties. The RIC did not respond to the Petitioner's query as to why it did not request the files containing the various versions of the syllabi. The Interested Parties were permitted to amend the minutes of the hearing after the Petitioner had already commented on them. The RIC did not adhere to the requisite term.
- The Petitioner amended the existing syllabi by restructuring chapters and sections, adding occasional sentences, entering the suggestions made by an editor, compiling a single list of terms, assembling a single bibliography, and finding mottos for each chapter. The Interested Parties adopted many of the Petitioner's adjustments in their own versions. Several other (new) chapters added by the Petitioner were deleted without the Petitioner being consulted.
- A conflict with the Board arose in June because the Petitioner was not offered a permanent position. The Petitioner wanted overtime pay for his work on the syllabi. The Petitioner did not withhold the files for a lengthy period of time, but made them available well in advance, in mid-August.
- The Petitioner does not agree with the RIC's ruling that his contribution to the syllabi was minimal, considering how many hours he spent working on them. The Petitioner does not agree with the RIC's conclusion that the principles of research integrity have not been violated. The

standards set out in the Netherlands Code of Conduct for Academic Practice should be applied in full to syllabi.

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

- Since this case is about subject matter presented in syllabi with a limited distribution, provisionally intended for and used in classes at the university in question, there is reason to conduct a more marginal review under the Netherlands Code of Conduct for Academic Practice, in the sense that the review should concern whether the Interested Parties adhered *in all reasonableness* to the principles set out in the Code.

The LOWI considered the following concerning the procedural grounds:

- The fact that the RIC's chairperson was in contact with the Petitioner in 2006 in a different capacity is unrelated to the Petitioner's integrity complaint in 2015, and had to be no reason for the chairperson to have withdrawn voluntarily. If the Petitioner thought otherwise, he should have voiced his misgivings early on.
- The Petitioner agreed beforehand that the hearing would take place without him. After the hearing, the RIC asked the Petitioner whether he still wished to be heard. The Petitioner said that he did not find that necessary. The Petitioner therefore waived his right to be heard.
- The RIC had all the relevant documents at its disposal for review.
- The length of the proceedings contravened the Complaints Procedure and Article 9:11 of the General Administrative Law Act (AwB). Failure to adhere to the (statutory) term does not call into question the scrupulousness of the recommendation or decision, but it does suggest that the Board should be advised to amend the Complaints Procedure.

The LOWI considered the following concerning the substantive grounds:

- According to the LOWI, Article 1.4 of the Netherlands Code of Conduct for Academic Integrity implies that an attribution of co-authorship is appropriate when a researcher has made a significant, scientific contribution to a publication.
- It is therefore of relevance precisely what the Petitioner contributed to the existing syllabi. The LOWI will consider the activities as alleged by the Petitioner as established fact.
- The Petitioner has not reasonably to be named as one of the authors of the syllabi because he did not write any of the final versions himself. In so far as he did write new sections, these sections were omitted.
- The Petitioner has not reasonably to be named as one of the co-authors of the syllabi because such attribution is not justified by his contribution. Entering the translation agency's suggestions, restructuring sections and similar activities are not science-driven but rather revision or a form of editing. Adding the occasional sentence to existing texts or restructuring sentences cannot be regarded as writing portions of text or as a critical substantive revision of blocks of text. The Petitioner improved the comprehensibility of the existing syllabi, but he had no input into their academic content.

- The Petitioner has not reasonably to be named as the syllabi's editor because he clearly did not bear final responsibility for them and it is understandable that only those who did should be named as such. It is important to note here that the Petitioner's actions left the Interested Parties very little time to compile the final versions of the syllabi themselves, and that the Petitioner only made the latest versions of the syllabi that he had amended available in mid-August. Under these circumstances, it would be unreasonable to expect the Petitioner to be regarded or credited as a (co-)editor or co-reviser of the final versions of the syllabi.
- The Petitioner has not reasonably to be named in the acknowledgements for the simple reason that the syllabi do not contain acknowledgements and, given the Petitioner's attitude, it was not obvious to add acknowledgements.
- Regarding the authorship of other persons, the following is pertinent. Over time, the syllabi have come to include contributions by different individuals, most of them members of staff. The LOWI has established that one of the syllabi twice fails to credit persons who clearly did contribute to the text. One of those persons is one of the Interested Parties, and the other is a member of staff. In the LOWI's opinion, it is unlikely that these two individuals were unaware of the omission of their names or that they did not agree to such omission. In all reasonableness, it cannot be argued that omitting these two names contravenes the Netherlands Code of Conduct for Academic Practice. It would have been clearer to describe the person whose name appears with the chapter as the instructor for that class. Failure to do so does not merit the relatively serious qualification of negligence, however.

The request is founded in so far as it concerns the failure to adhere to the (statutory) term of the proceedings. The remainder of the request is unfounded, in part given the more marginal review under the Netherlands Code of Conduct for Academic Practice. In view of the unusual circumstances of this case, the LOWI sees little reason for the RIC's comment that the Petitioner's name should have been included in the acknowledgements or that it is negligent not to describe the person whose name appears with each chapter as the instructor.

The LOWI has advised the Board to confirm the decision as its final decision, with due regard to the LOWI's considerations. It has also recommended that the Board amend the Complaints Procedure to comply with the terms prescribed by the General Administrative Law Act (Awb).

On 2 September 2016, the Board issued a decision in line with the LOWI's opinion.