

Summary of LOWI opinion 2018-05

Keywords: characteristics of academic practice, expertise, independence, public access

Relevant provisions: Elaborations 1.10, 3.1, 4.5, 5.1, 5.2, 5.3 Netherlands Code of Conduct for Academic Practice

Boards involved: Executive Boards of the University of Amsterdam and Maastricht University

Petition

According to the Petitioner, a report commissioned by a public authority concerning the validation of a valuation method is not scientific and independent. The authors, who are associated with the University of Amsterdam and Maastricht University, do not have the specific expertise required. Furthermore, according to the Petitioner, the verifiability of the report was made more difficult due to the use of secret sources and competing views were not discussed.

Decision by the Board

The Research Integrity Committees (RICs) of the two universities set up a joint Sub-RIC to investigate the complaint. According to the Sub-RIC, the assignment does not deviate from the expertise and competence of the authors to such an extent that they should have rejected the assignment. The use of non-public sources should be avoided as much as possible. However, the authors cannot be blamed for using non-public sources made available by the client. It is not up to them to make those sources public. The Petitioner has not demonstrated that the authors allowed themselves to be guided by the interests of the client. They should, however, have taken greater account of the social impact that the report might have and should have paid more attention to competing views. Ultimately, failure to comply with the duty of accountability and the obligation to provide substantiation cannot be regarded as a material breach of research integrity. The Sub-RIC advised the RICs of the two Boards to rule the complaint unfounded. Both RICs advised their respective Boards to adopt the Sub-RIC's considerations and conclusion, and to rule the complaint unfounded. The RICs also advised the Boards to call for full public disclosure of the non-public sources used. The Boards adopted this advice and ruled the complaint unfounded.

The Petitioner's most relevant objections are as follows:

The report is contrary to the principles of honesty and scrupulousness, verifiability, impartiality, and independence.

The most relevant considerations in the LOWI's opinion:

- Review under the Netherlands Code of Conduct for Academic Practice is only possible if there is a case of academic practice. According to its preamble, the Code applies to "[academic] practice, which is understood to include scientific and scholarly teaching and research at all universities that have declared to uphold the Code". The concept of academic practice is not therefore limited as regards its interpretation. The Netherlands Code of Conduct for Academic Practice does not contain any further list of activities that fall within the concept of academic practice. The LOWI has set out what this is taken to mean in its opinions 2012-01, 2012-02, 2014-04, 2015-01, 2015-07, and 2016-05. In its most recent opinion 2016-05, the LOWI considered, *inter alia*, that scientific research is characterised by

the formulation of a scientific problem definition, justification of the research by reference to previous scientific research results, the aim of publication in scientific journals, and the fact that the research is aimed at the scientific forum. This list of characteristics is not intended to be exhaustive and does not need to be applied cumulatively.

- Based on these characteristics, the LOWI finds that the report can be considered as academic practice. The objective of the assignment was scientifically sound reporting. The Minister undertook that the valuation method would be validated by an independent scientific institute and that the House of Representatives would be informed. It is also relevant that the report includes a specific research question and formulates a scientific problem definition. The report also expressly states that the client approached the authors on the basis of their positions at their institutions and that the Boards explicitly assumed responsibility for the report.
- The authors jointly have sufficient expertise to carry out the research properly. The LOWI finds that there is no question of a violation of Elaboration 1.10 of the Netherlands Code of Conduct for Academic Practice.
- As regards the requirements of scrupulousness included in Elaboration 1.6 of the Netherlands Code of Conduct for Academic Practice, the LOWI finds that the authors should have provided better substantiation for how they arrived at their conclusions. As a result, in the LOWI's opinion, the authors acted negligently by not including any reasoned refutation or critical discussion of the sources.
- Elaboration 3 of the Netherlands Code of Conduct for Academic Practice provides that the information presented must be verifiable and documented so that all stages of the research can be checked. In LOWI opinion 2017-09, the LOWI concluded that an exception to this principle is permissible in exceptional circumstances. In the present case, full disclosure of the sources used could have harmed the economic or financial interests of the State. Under those circumstances, it is not unreasonable that the authors accepted that the client provided them with a source that is not entirely public. However, the LOWI does note that the results of the study were to be submitted to the House of Representatives. The authors should have stated more clearly in the report that they used non-public data, and why they did so. In the opinion of the LOWI, the authors acted negligently in that respect.
- In the opinion of the LOWI, the Petitioner has not sufficiently demonstrated that the authors acted in breach of the principle of independence included in Elaborations 5.1, 5.2, and 5.3 of the Netherlands Code of Conduct for Academic Practice. By not discussing competing views in their report, the authors have left themselves open to the suspicion of adopting a one-sided stance. Divergent views should be mentioned, discussed and – if necessary – refuted. In the opinion of the LOWI, the authors acted negligently in that respect.

LOWI ruling and opinion:

The authors failed in a number of respects to comply with the Netherlands Code of Conduct for Academic Practice. Due to the limited scope of the assignment the LOWI considers that the observed deviations from the Code cannot be classified as a violation of research integrity. However, the deviations must be qualified cumulatively as culpably negligent conduct. The LOWI has advised the Boards to adopt the proposed decision as its final decision, but to amend the considerations in accordance with the LOWI's considerations and opinion.

Final decision of the two Boards:

Both boards have adopted the proposed decision as their final decision, with the considerations of the proposed decision being adapted to the LOWI's opinion. The complaints against the authors are declared to be admissible but not well-founded.