

Date: Wed, 23 Dec 2009 15:46:44 -0500

To: Marie.Emond@nserc-crsng.gc.ca
From: Mort Shirkhanzadeh <shirkhan@queensu.ca>
Subject: Allegations of institution non-compliance
Cc: Kerry Rowe <rowek@queensu.ca>
Bcc: shirkhan@queensu.ca

Dear Ms. Emond

I am requesting that my allegations below be investigated in accordance with schedule 8: Investigation and Resolution of Breach of Agency Policies of the MOU. Please let me know if you require further clarification.

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Allegations of institution non-compliance

Allegations of data fabrication against Dr. Smith and his co-authors were brought to the attention of Dr. Rowe in my letter dated March 22, 2005 (attached) but the records of the investigation available to me now show that these allegations were not investigated at the time. According to the Tri-Council Policy Statement, "It is the responsibility of the institution to investigate all possible instances of misconduct in research and scholarship, including determining whether a breach of integrity has taken place". In this instance, the allegations of data fabrication that I brought to the attention of Dr. Rowe in 2005 were not investigated and the university did not determine whether or not a breach of integrity took place.

Evidence in support of the allegation of non-compliance:

According to the university report that was submitted to NSERC in 2005, the scope of the investigation undertaken by the external expert was limited to data falsification. The external expert did not consider "other allegations of academic misconduct or questions concerning the scientific results and the analyses." This is confirmed by the external expert's statement in the investigation records.

According to Dr. Rowe's letter of December 22, 2005, Dr. McLatchie was selected to receive all of material, including responses from the external expert, and render a final opinion on the file.

Dr. McLatchie's overall assessment in 2005 was as follows:

1. No evidence of data falsification
2. No evidence of plagiarism
3. Copyright agreements may not have been observed.

It is clear that Dr. McLatchie's assessment also does not refer to the issue of data fabrication.

The records of the investigation also show that the numerous allegations that I brought forward in 2005 were not accurately presented in the university report. The university presented my allegations as (a) data falsification, (b) plagiarism, and (c) republication of earlier work. The more serious allegations, including data fabrication, were completely eliminated from the list and, therefore, were not investigated.

In my letter of October 7, 2005 that I sent to Dr. Rowe, I made the following comments in response

to his request for the list of allegations:

“With regard to the request from Dr. Smith’s legal counsel, it is the task of the investigative committee to assemble a comprehensive set of allegations based on the reports that were transmitted to your office. In most cases, allegations sent to your office were accompanied by significant documentation. It should not be difficult for the committee (if there is a committee) to prepare a comprehensive list of allegations. If there is a need for clarification, I will be pleased to communicate with the committee.”

The university could have prepared a comprehensive list of allegations for the investigation because my letters containing various allegations were all available to Dr. Rowe at the time. Despite my letter of October 7, 2005 and my willingness to communicate with the committee, the allegations of data fabrication contained in my letter of March 22, 2005 were eliminated from the list of allegations. On the same day (October 7, 2005), the university asked the external expert to “review materials and submit an assessment of certain allegations of academic misconduct.” According to the external expert, “These materials included letters and published articles, with respect to allegations of data falsification” The external expert was not asked to look into the allegations of data fabrication or other allegations that I brought forward. According to the external expert’s statement in the records, the scope of the investigation undertaken by him was limited to data falsification. There is no evidence that the external expert addressed the specific allegations of data fabrication outlined in my letter of March 22, 2005.

One can argue that a comprehensive list of allegations based on my letters could be easily assembled in 2005 if there was an investigative committee free of real conflicts of interest. I was informed on December 22, 2005 (after the investigation was over) that both the external expert and Dr. McLatchie were selected with the approval of Dr. Smith. Furthermore, Dr. McLatchie had a clear conflict of interest in this case that should have been declared in the report. On September 9, 2005, NSERC asked the university to pay particular attention to the issue of “avoiding real or apparent conflicts of interest in selecting individuals to participate in the investigation”.

I consider my letter of October 7, 2005 to be an important document that should have been taken seriously by the university and by NSERC. Records show that on November 21, 2005, NSERC asked the university to pay particular attention to the issue of “ensuring that any comments, information and documentation collected during the investigation become part of the record”. NSERC expected the university report to contain enough detail “to enable NSERC to determine that an appropriate enquiry process was followed,”.

The records of the investigation also show that the allegations of data falsification/ fabrication contained in my letter of June 13, 2005 were not investigated. These allegations were related to a published paper by X. Zhu and R.W. Smith (Materials Science Forum, Vol. 215-216, pp 113-118 (1996)) that was sponsored by NSERC. As I indicated in my letter of June 13, 2005, the data presented in Fig.2 (a) in this published paper are so improbable that it seems impossible that they represent real data, free of some selection process or other misrepresentation. This letter was not given to the external expert and there is no evidence that the external expert addressed this issue.

It is clear that the university did not follow appropriate procedures in arriving at its conclusions.

Sincerely,

M. SHIRKHAZADEH