Inferences and Assumptions Project

January 25, 2022

**Support Codebook**

**Overview**

Coders will be using a combination of NVivo 12 and Excel software to ‘code’ decisions written by members of the Refugee Protection Division (RPD) of the Immigration and Refugee Board. As you will see, coders will use NVivo to review the first-level ‘Inference’ codes and will use Excel to capture their own ‘Support’ code decisions.

First-level codes: the Inference Codes

A team of JD students are coding these decisions using the Inferences Codebook (attached). The Inferences Codebook sets out to identify each of the inferences that the members are drawing.

The aim of this first-level coding is two-fold:

To quantify in how many of these decisions the members concluded, in the context of an assessment of the risk of persecution, that the claimant had lied. ‘Lying’ is defined here as having “invented some or all of their allegations with the intention of deceiving the Board.”

To explore the inferences that the members use to justify their conclusion that the claimant has lied. This coding will quantify in how many decisions each inference appears but will **not** capture how often it appears in a given decision.

Second-level codes: the Support Codes

The refugee lawyer coder team (the “Support coders”) will be reviewing the codes identified by the Inference coders. They will be looking at each of the decisions in which the member concluded that the claimant was lying and adding a second layer of coding to the Inference codes.

When the Support coders review a decision, the Inference codes will show them where the different kinds of inference appear in the text. For each decision, they will look at each category of inference and decide how much support they feel that this inference brought to the member’s negative credibility conclusion.

The aim of this second-level coding is:

to measure the support that each category of inference is bringing to the decisions under review.

**The coding process**

Coders will be trained in how to use the NVivo 12 software to read the Inference codes, and how to use Excel to capture the Support codes. Each coder will be assigned a set of decisions to code.

First:

In Nvivo, for each decision, look at the Metrics code (the code that shows whether the member made a negative credibility finding). If the member made no negative credibility finding, indicate this by putting a ‘1’ in the ‘No deception’ column in Excel, and move on to the next decision. Otherwise, continue.

Second:

Read the decision once through from start to finish.

Third:

Look at the chart that shows the categories of inference that the Inference coders have identified, with the values on the Y axis showing “percentage covered.” E.g.:

Chart, bar chart

Description automatically generated

Fourth:

On the chart page, in the tabs bar, go to ‘select data’

In the grey box, where it says X-axis, click the dropdown menu: choose “selected codes and cases”

click “select”

select codes A2 through A12 (just select the ‘parent’ codes, not the ‘child’ codes within them; e.g. select “A10 Risk response” but do not select “delay in claiming,” “delay in leaving” etc.).

Note: You are only coding the ‘parent’ Inference codes (A2-A12), **not the Metrics codes**, and not the individual ‘child’ codes within a ‘parent’ code.

Fifth:

By clicking on one of the category columns, open a link to the text of the decision where each of the relevant inferences in that category is highlighted.

Sixth:

For each category of inference (e.g. “Implausible inconsistency” “Manner, general quality of testimony”), read through the highlighted text and decide how much support that category of inference brought to the member’s conclusion that the claimant was lying, as described below.

Note: The member may make many discrete findings based on many discrete applications of one category of inference. The aim here is to give a measure of the support provided by the category overall, and the category will be as strong as its strongest inference. In other words, if one category contains a number of insignificant inferences but one that is significant, we would code all of the text in that category at the “significant” code.

Sixth:

In Excel, for each Inference code, put a ‘1’ in the column for the appropriate Support code. Put 0s in all of the other cells in the row.

**Measuring support**

To try to capture the extent to which a category of inference supports the member’s credibility conclusion, the coders will look at each category of inference and code it at one of the three codes below.

Note: In writing their decisions, at times the members will set out a series of inferences that all lend weight to a final ‘non-credibility’ conclusion: (“Delay undermines your credibility. Inconsistencies undermines your credibility…For all these reasons, I conclude that you are not credible”). But at times, instead, the members will write their reasons as a series of stand-alone findings (“Because you delayed, I find you not credible. Because of the inconsistencies, I find you not credible”).

When the Courts review the reasonableness of these decisions, no matter how they are written, the judges read the reasons cumulatively, as a series of circumstantial findings that together support an ultimate conclusion. The Courts, in other words, weight the sufficiency of the support that the members have identified throughout their decision. We will take the same approach in measuring the support that these inferences bring to the member’s ultimate conclusion.

**The Codes**

**Z1: Sufficient**

This category of inference alone would arguably be sufficient to ground the member’s negative credibility conclusion.

Assume all of the inferences in this category are arguable. Use your understanding of the quantum of support that is legally sufficient to justify a negative credibility judgment, drawing on your experience with the jurisprudence that identifies credibility conclusions that are sufficiently or insufficiently supported on the evidence. Ask if this category, standing alone, could provide sufficient support for the member’s negative credibility conclusion.

**Z2: Significant but not sufficient**

This code captures all categories of inference that are not captured by either of the other two codes.

**Z3: Insignificant**

This category of inference lends at most minimal support to the member’s negative credibility conclusion. If you removed it from the decision, the negative credibility conclusion would be, at most, somewhat weaker.

Assume all of the inferences in the decision – in all of the categories – are arguable. Using your understanding of the quantum of support that is legally sufficient to justify a negative credibility judgment, ask how much weaker the conclusion would be if you removed this category of inference.

In deciding whether the category of inference is sufficient or insignificant, the coders will be guided by the following considerations, among others:

Scope: How much of the member’s reasoning around credibility involves this category of inference? In other words, how much of the relevant text related to credibility in the decision overall is taken up with this category?

Centrality of the subject matter: The centrality/importance of the substance of the alleged lie, as distinct from the strength (reasonableness) of the deception inference drawn from it. E.g. the member might identify convincing reasons for concluding that the claimant lied about a minor or peripheral matter, or unconvincing reasons for concluding that they claimant lied about a central matter. What may be relevant here is how central/important the alleged deception under discussion is, rather than how reasonable or persuasive the finding is.

* Breadth of the subject matter: Whether the inferences in the category all relate to a single incident or observation, or whether the member has identified a number of incidents or observations from which they draw the inferences. As above, the member might identify convincing reasons for concluding that the claimant lied about one thing or on one occasion, or unconvincing reasons for concluding that they claimant lied about many things or on many occasions. What may be relevant here is how broad the support for the finding is, rather than how reasonable or persuasive the finding is.

Position: Where in the decision does this category of inference appear? Is much/all of the relevant text upfront at the beginning? Is much/all of it tacked on at the end?

Language: Does the text itself emphasize or de-emphasize an inference?

E.g. emphasising: “The panel was struck hard by” “The panel found very significant the fact that”

de-emphasizing: “While it did not play a major role in the panel’s decision” “It is also worth noting that” “The panel also observed that”

**Notes**

## Where the inference coders have missed material

Jun 9 22

If the Inference coder has coded certain passages of text at a given code, and the Support coder notices other passages of text that should have been coded at this same code but that the Inference coder overlooked, the Support coder will not consider these overlooked passages. They can look around the edges of a coded passage – we have said that there is no precise magic to how much text the coders include in capturing a particular instance of an inference – but they will only weigh the instances that the coders captured.

## Where the material in a code relates to two different claimants

May 2 22

If, within one category of code, the member has made credibility findings about two claimants, the coding should reflect the code at its most significant.

So for example, if the member’s finding that Claimant A is lying rests entirely on the coded text, whereas the member’s finding that Claimant B is lying rests largely on other findings, this category would be coded as ‘sufficient’ because it was sufficient support for the finding about Claimant A.

Aug 2 22

Where the panel is basically treating the two claimants as the same person, we do the same and consider them together. The analysis above is only for when the member really considers them separately.

## Extra ‘context’ text in a category

Apr 7 22

In calculating the support that the category provides, coders can simply mentally remove any extra text that the Inference Coders have included to provide context.

## The ‘unreasonableness’ of the adjudicator’s finding

Apr 7 22

Where coder feels that the adjudicator had made an unreasonable finding, this does not necessarily weaken the support that the finding provides to the adjudicator’s conclusion. An unreasonable finding may still be ‘sufficient,’ for example, if it is the only finding supporting the conclusion, or if it is thorough, substantial, central etc. and if a judge might conceivably find that it was reasonable.

But it is possible that a finding could be just so ridiculously unreasonable that it really adds no weight at all. To reach this conclusion, the coder would need to be convinced that no judge would every find that it was a reasonable finding.

## Burden of proof

Apr 7 22

The burden of proof is on the category to qualify in to the ‘sufficient’ and ‘insignificant’ codes. If the coder is not convinced that the category qualifies for one of these two codes, then they will code it as ‘significant.’ This accords with the default presumption that the adjudicator has chosen to comment about a point because they feel that it is significant.

## Analytical approaches to distinguishing among the codes

Apr 1 22

When you’re trying to decide as between significant and sufficient, you look at the coded text by itself (i.e. take away the rest of the decision). If the text by itself could support a negative credibility finding, then the Support code is ‘sufficient.’

For this analysis, it doesn’t matter how strong the rest of the decision was, because you are taking it all away and only looking at the text in question. The rest of the decision may have been very strong – in theory, there could be several sufficient reasons to support the credibility conclusion – but all that matters is how strong this particular coded text is.

On the other hand, when you’re trying to decide as between significant and insignificant, you take the coded text out and look first at what’s left of the decision.

In this analysis, it does make a difference how strong the rest of the decision was. If the rest of the decision is so thoroughly supported that adding this coded text back in would make only a minimal difference, then the Support code is ‘insignificant.’

BUT the fact that the credibility conclusion is already *well* supported without the coded text may not end the analysis – if there’s still room for it to be *better* supported, and if the coded text adds something valuable. So you will then look at the coded text and consider the factors in the Codebook (scope, centrality, breadth, position, language). The more well supported the conclusion is without the coded text, the more support the coded text will need to bring before it will be significant.

## The ‘centrality’ of the subject matter

Apr 1 22

When we’re considering the ‘centrality’ of the subject matter in the code – when we’re looking at “how central/important the alleged deception under discussion is” – we’re looking at how important it is to the objective basis of the claim. The Fed Court has held that it is unreasonable to base credibility findings on matters that are minor or peripheral, by which the Court means matters that relate to questions that would be irrelevant in the legal analysis (e.g. the route by which the claimant came to Canada). The more the credibility finding relates to a matter that is legally important, the more central it is.

## Distinguishing the ‘sufficient’ and ‘significant’ codes

Mar 25 2022

A helpful element to consider, along with those identified in the Codebook, is to what extent the finding is ‘robust’ or ‘thorough.’ A single finding that is thorough and robust – that the member has spent a lot of time and effort fleshing out and supporting – may be ‘sufficient’ even if we are not convinced by the reasoning, even if we would argue that it is nonetheless unreasonable. The issue is whether an average Federal Court judge could conclude that this category, standing alone, could provide sufficient support for the member’s negative credibility conclusion.

## Where a credibility decision on the whole is very weakly supported

Mar 10 2022

It is possible to have a credibility decision that is only supported by “insufficient” inferences. When this is the case, it may be tempting to ‘bump up’ what would otherwise be an insignificant category inference – on the logic that “There must be some support here somewhere”… But it is possible that the decision on the whole is simply insufficiently supported. If removing the category wouldn’t make much of a difference – because the credibility finding ultimately is too weakly supported to stand – then the category is insignificant.

## If you can’t make sense of the Inference coding

Feb 22 2022

If you are not able to find the passage in the coded text that relates to the coded inference, we will discuss this as a team. If as a team we are not able to identify it, we will not code this inference (will enter ‘0’ values in each of the Z code cells).

Coders will pls highlight on the coding sheet any codes that the Inference coders had used in coding a case but that the Support coders cannot identify.

## Assessing the ‘scope’ of the inference

Feb 8 2022:

The Inference coders may code more text around an inference than they need to, to make sure that you have the context for what you are reading. When you read the text, in considering the ‘scope’ factor, you should consider how much of the coded text actually reflects this inference.