



Landmark Ruling in Pregnancy Discrimination Tribunal for British actor Antonia Kinlay STATEMENT FROM ERA5050

In 2017, Antonia Kinlay was cast as Sarah Shadlock in the BBC television drama, “Strike”, produced by Brontë Film & Television. Antonia was then replaced from her casting after series 1, “The Cuckoo’s Calling” aired in 2018, on announcement of her pregnancy.

The Employment Tribunal case was won by Antonia Kinlay, represented by leading London law firm [Joelson](#) with support from [ERA5050](#). Brontë Film & Television were found to have acted in contravention of the Equality Act 2010 towards her. Replacing Antonia with another actor because she was pregnant amounted to unlawful discrimination. The outcome of this case is the first of its kind in the TV and film industry about genuine occupational requirement in the context of actors and pregnancy and is a significant step towards protecting female actors and tackling sex and gender-based discrimination on British stage and screen.

Joelson’s Employment team was led by Partner, Jennifer Maxwell-Harris and supported by Senior Associate, Reema Jethwa and Trainee Solicitor Emma O’Rourke. Counsel was Paul Epstein QC who expertly represented Antonia Kinlay at the Employment Tribunal hearing. Polly Kemp from ERA5050 provided entertainment industry expertise and Ms Kinlay provided six key witness statements from other actresses who had filmed throughout their pregnancies.

Background

When Ms Kinlay approached ERA5050 in Sept 2019 believing she had experienced Pregnancy Discrimination, it was clear to us that she had a case. ERA5050 is an organisation founded and run by working, professional actresses and it was a ‘no brainer’ that we should do all in our power to help her. When it became clear that Ms Kinlay had no other legal support, our first step was to introduce her to our team of lawyers. Joelson are a top law firm who listened to her story and agreed without hesitation to take on the case, agreeing it was likely to be an example of pregnancy discrimination.

It was ERA5050’s belief and experience, that the skills employed by directors, DOP’s and costume would have successfully been able to disguise Antonia’s bump. Antonia would have only been between 4.5 and seven months pregnant over her four days of filming. There are many examples of high-profile actresses who have worked throughout their pregnancies, in some cases up to their 8th month, filming complex and dynamic roles without an audience being aware. Crew and other professionals employed in the TV and film industry are trained to deal with the many variables that can occur throughout filming including weather and pandemics.

Over the 18 months leading up to the hearing, the legal team worked closely with ERA5050 and Ms Kinlay provided six witness statements from other actresses who had filmed throughout their pregnancies, with Polly providing expert witness testimony and support at the ensuing Employment Tribunal.



We were delighted that the Employment Tribunal ruled in Ms Kinlay's favour, and we believe this is the first time an actress has taken the risk to challenge a production company on the basis of pregnancy discrimination.

For Ms Kinlay, it was never about the money or who it was who acted in this unfavourable manner, rather that it was important to highlight this form of pervasive discrimination in the hope it doesn't happen to other actresses. ERA5050 has been approached before by actresses in a similar position and come to realise that pregnancy discrimination needs to become part of the wider conversation about power imbalances and a need for increased independent industry monitoring, regulation and sanction. Discrimination against pregnant actresses is relatively common in the film and TV industry. More often than not, it happens to less well known, less powerful women. For too long production companies have acted with impunity, simply recasting pregnant women, citing reasons such as occupational requirement to not be pregnant, scripts being rewritten with the part changed or written out, different locations over different dates making continuity impossible.

ERA5050 said: *'The barriers that women face are many and varied. ERA5050 is committed to finding practical solutions to address gender inequality across TV, film and theatre. We felt it was critical to support Ms. Kinlay through this pregnancy discrimination case in order to draw attention to the lack of regulation and oversight that exists in the entertainment industry and the need for better signposting to support women who face this type of discrimination. Our hope is this ruling will drive forward positive change and remind both actresses and the industry of their legal rights and responsibilities. We applaud Ms Kinlay for her strength in coming forward and our lawyers Joelson for supporting us in this endeavour. We would welcome statements from production companies that commit to ensuring they will audition all women suitable for a role whether pregnant or not and continue with her contract if she subsequently becomes pregnant.'*

Paul Fleming, General Secretary of Equity said: *'Equity has supported ERA5050 on the progress of this case, and we're proud of its unequivocal outcome. In particular, we applaud Antonia's bravery not just in taking the case but seeing it through to court, ensuring that other pregnant artists have a clear case study in their rights. We hope this will send ripples through the industry that you cannot discriminate against those who are pregnant or deny their right to work. This is another step in Equity's ongoing work with ERA5050 on raising awareness and fighting for the rights of women at every stage of their working life.'*

Joelson's team for the Employment Tribunal was led by Partner, Jennifer Maxwell-Harris and supported by Senior Associate, Reema Jethwa and Trainee Solicitor Emma O'Rourke. Counsel was Paul Epstein QC who expertly represented Ms Kinlay at the Employment Tribunal hearing.

Jennifer Maxwell-Harris, Partner at Joelson explains why this case is important:

'Antonia's case was about pregnancy discrimination: did the production company Bronte Film and Television Ltd treat Antonia unfavourably because of her pregnancy by not offering her a role as Sarah Shadlock in the second of the 'Strike' series: "Strike: Career of Evil"?'



Under the Equality Act it is unlawful to treat someone unfavourably because of certain 'protected characteristics. There are very limited exceptions to this. A 'genuine occupational requirement' can be an exception. A genuine occupational requirement has to have a legitimate aim and it must also be proportionate.

Pregnancy is a protected characteristic. Bronte said that it was a genuine occupational requirement (GOR) that the actor not be visibly pregnant because that did not fit with the storyline.

Ms Kinlay agreed that there was a requirement that the character in the role be not visibly pregnant. This was a legitimate aim. There was not however a GOR that the actor herself not be visibly pregnant given the many ways of concealing a pregnancy, with props or with digital alteration.

Bronte said that there was a GOR that the actor not be visibly pregnant because the means of disguising the pregnancy were not proportionate. Bronte argued that disguising the pregnancy could have limited the Director's vision, there was a risk Antonia could be unwell because of her pregnancy, it would be disproportionate to arrange the filming schedule around the pregnancy, the post production editing costs could be too high in proportion to Antonia's wage and finally that it could be difficult to obtain insurance.

The Employment Tribunal did not agree with Bronte. There were a number of unpredictable factors in the filming including the weather, a script that was subject to changes and possible changes of venue. The risk of Antonia being unwell was minimal. The role of Sarah Shadlock was a minor one and would not have meant big changes to the filming schedule. Post-production visual editing had not actually been considered at the time however, even if it had been, the cost was not disproportionate. Likewise, insurance had not been considered at the time but witness evidence from other actors who had filmed while pregnant suggested that Antonia filming for four days in the middle of her pregnancy was not an insurmountable consideration.

The case is a key one for GOR exceptions in equality laws in the film and television industry. Employment tribunals interpret exceptions to discrimination, such as relying on a GOC, restrictively and it is for the Respondent, that is, for Bronte, to show that relying on a GOR exception was both a legitimate aim and proportionate.

The Tribunal did not agree with Bronte that an occupational requirement that the actor not be visibly pregnant was reasonable or necessary. Bronte's arguments about the costs and risks of continuing with Antonia in the role did not succeed.

Antonia was clear from the outset that this was never a case about monetary compensation. This case was about a principle of social justice. All Antonia sought from Bronte Film and Television was fair treatment and to highlight problems concerning sex and gender in the industry.'

Antonia Kinlay said: *'I'm delighted with the ruling. I think it is a fundamental step forward for women, both behind and in front of the camera, who want to continue to work throughout their pregnancies without fear of losing their jobs. In an industry whose purpose is to 'make the unreal seem real', this ruling shows that pregnancy discrimination*



should not be tolerated. It is often possible to conceal a pregnancy by applying the very skills we celebrate in our creative production teams. Indeed, our six witnesses helped prove just how achievable this is as they all filmed late into their third trimesters, concealing their pregnancies without the need for post-production digital alteration.

On a personal level it was a very difficult decision to take a production company to court and doing so carries a substantial reputational risk. However, knowing how widespread discriminatory practice is in the industry, I felt that it needed to be challenged. Doing so would not have been possible without the unwavering support of Polly Kemp from ERA 5050 and the exemplary legal services of Joelsons and Paul Epstein QC at Cloisters. The money awarded will be used to help other women take their cases forward and fight for the fair treatment they deserve. My hope is that production companies will take this ruling into account and instead of penalising women for their pregnancies, try to facilitate women to work throughout their pregnancies if they want to.'

Ends

Notes to editors

About ERA5050

ERA5050 is a high-profile not for profit campaign founded in 2015 to campaign for 50:50 gender balance on British stage and screen. ERA5050 has grown rapidly in influence and represents over 7000 members across the UK and internationally. The campaign has an incredible wealth of supporters that include Olivia Colman, Emma Thompson and Emma Watson. Industry partners include Spotlight, Equity, TIMESUP UK, Directors' UK, Primetime, Act for Change and the Geena Davis Institute.

ERA5050 wants women to be represented in film, TV and theatre in a way that reflects the full extent of their presence and the diversity of their untold experiences in the real world. We want to change the way women are presented on our screens, highlighting and addressing the relationship between the lack of women in key creative roles, the lack of on-screen representation of actresses and the impact on society and particularly children.

We champion the equal representation of women, working with the industry, with Parliament and other relevant regulatory and funding bodies in our efforts to secure 50:50 gender balance on UK screens and stages across annual programmes of content. We believe audiences deserve to see women represented as scientists and superheroes, rather than merely wives, sex objects and victims, and that actresses deserve equal pay and roles that make the most of their skills, at every stage of their careers.

About Joelson

Joelson is a London law firm offering a range of top-ranked legal services spanning corporate, property, employment, litigation and immigration.