The good, the bad and the downright stupid …

In 1892 Mark Twain in his novel the 'American Claimant' introduced us to the character, Colonel Mulberry Sellers. Mulberry Sellers was the man who said: "There's gold in them thar hills"… a staple of any Wild West fan's vocabulary

This month I felt like a gold prospector from the 1800s panhandling for interesting stories from the world of Jersey law and practice. Guess what? I have come across a few nuggets! Yeehaw.

The first to report is a "whoa there cowboy" instruction in respect of the implementation of the new Jersey Legal Aid scheme.

As regular readers will note, this has been a bugbear of mine for some years. The whole process has taken an eternity. The Access to Justice Review was "lodged au Greffe" in 2013, just about the time when the gold rush in California commenced! The new Legal Aid scheme (as agreed with the Jersey Law Society) was scheduled to be introduced on the 1 July 2018. Unfortunately some unidentified varmints have overrun the system. As a consequence, the implementation of the new scheme has now been deferred until the 1 January 2019.

It seems that these forthcoming pesky Jersey elections have contributed to the delay, together with those fellas in the Corporate Services Scrutiny Panel who informed the Chief Minister of their intention to call in the draft law dealing with the new scheme for scrutiny, thereby highjacking the Legal Aid coach. Accordingly, the Chief Minister has delayed consideration of the draft law until June. It is unlikely that a vote will now take place until September. Other laws get passed very quickly when there is a political will. Why not this?

Speaking of the elections, our up and coming display of democracy this month reminds me of scenes from the Old West. I am not talking specifically about the anarchy, the chaos and the romance. I am talking about the vast prairie of candidate inexperience (financial, political and otherwise) which voters now must navigate. Talk about Hobson's choice. On this note, I do find that the reduction in the number of lawyers seeking States positions to be disappointing. I know that lawyers are not the most popular gang but I think it is fair to say that traditionally lawyers have made good parliamentarians. Perhaps the failure to attract more legal beagles to the modern political arena is reflective of the quality (or otherwise) of the election process and how politics is generally conducted in Jersey, rather than an absent desire of lawyers to enter the fray.

As mentioned last month, I am embarking this summer on a road trip to discuss the new characteristic of disability which is being added to the discrimination stable. As you know, I have long been saying that we must accept the fact that these nanny state laws, which are now coming in waves, are here to stay. We have no alternative but to accept and embrace them. However, the stench of PCdom pervades the execution of these laws. I await with interest the feedback from the business community over the next few months. The outcry concerning the non gender ambassador for the Battle of Flowers is a good start to a summer of discrimination discussion.

Talking about such laws, I noted with interest a recent case in the Employment and Discrimination Tribunal in which a Claimant's claim was struck out as a result of the Claimant deliberately breaching and disregarding Orders of the Tribunal. There appears to have been an ongoing gun fight between the Claimant and the lawyer acting for the Defendant in the case. It descended into name calling, poor behaviour generally and flagrant abuse of Tribunal Orders. Ah, the mark of the Wild West.

During the course of the case, the Tribunal noted that (once again) it does not have power to award costs against any party as a "sanction". The Tribunal was required to use its Case Management Orders as a means to persuade the Claimant to cease her unreasonable and aggressive behaviour. It failed. The Claimant could not curtail such behaviour and, as a consequence, the case was thrown out.

Isn't it about time that we gave the Tribunal some additional "beef" and allowed costs penalties to apply? In my experience, unlike in the Old West, the only sanction that ever properly works, in a civil sense, is a financial one.