



WITHOUT PREJUDICE

To whom it may concern.

Thursday, 26 August 2010

Dear Sir or Madam.

Open letter to all interested parties and editors:

AARTO IN THE BALANCE DUE TO MISAPPLICATION AND MISMANAGEMENT AND AN OUTRIGHT ADMISSION THAT TRAFFIC ENFORCEMENT IS ABOUT NOTHING BUT MONEY

"If you propose to speak, always ask yourself - is it true, is it necessary, is it kind?" - Gautama Buddha

Firstly let me state for the record that the content of this letter does not in any way even closely resemble the legal definition of slander or defamation. We have had it very carefully checked by legal professionals to ensure that we stand no risk of being sued by the parties who will be named in it. This is due to the fact that what is contained herein cuts straight to the chase and everyone has the unalienable right to know the truth.

- Is what I am about to say true? – Yes, it is 100% factual!
- Is it necessary? You had better believe it is!
- Is it kind? – That all depends on which side of the fence you are on!

For a long time now, JPSA has been involved in a number of different exercises and actions intended to tackle the growing problem of power and process abuse as well as the corruption and private industry involvement which is spiralling way out of control within law enforcement authorities.

This has somehow earned us a grossly undeserved reputation of being a "motorists' lobby group" with some and "trouble makers" by others, depending on whose perspective we are being viewed. Conversely, there have been a large number of individuals and companies that have been assisted by our organisation in gaining legal remedy to their situations and by them, we are viewed as an organisation that cares very deeply about the correct application of the law and is actually *doing something* about the abuses that take place on a daily basis.

This is equally true within some SAPS divisions where we have worked to provide assistance in anti-corruption exercises and our credibility with them continues to grow as is becoming apparent in a number of traffic authorities all over the country who have decided to cooperate with us.

JPSA has been aware of the fact that the JMPD and the RTMC have been at loggerheads for some time now. However, knowing that two supposed law enforcement agencies (JMPD and RTMC/RTIA) publicly exposing their infighting would be very bad for a national points-demerit system which is long overdue in this country, we decided not to go public with the information that we have until now. Everything that appears in this document can be substantiated by physical evidence and none of it is made up or inflated in any way. We are not interested in sensationalism – only in the truth and tackling problems in effective and sometimes creative ways.



But on Sunday 22 August 2010, the Beeld Newspaper and News24.com carried an article, aptly entitled “Goudstad kan toepas van verkeerswette los” in the Beeld and “Pricey traffic system irks Joburg” on News24.com where Director Gerrie Gerneke decided it was okay to air the JMPD’s and RTMC’s dirty laundry. This was picked up on by Television news as well.

Our response has been *slow in coming* because we absolutely needed to consider all of the facts and make certain that what we are about to let you know is in fact in the public interest to know.

My Afrikaans is appalling so forgive me for concentrating on the English version of the News24.com report which I am assured closely resembles the Afrikaans one.

- Recently, we selectively exposed the fact that the JMPD had misapplied the AARTO Act by tripling fine values for fines issued to juristic persons – ahead of the provision becoming applicable in April 2011.
- We also selectively exposed the fact that the JMPD had misapplied the AARTO Act by sending out infringement notices via standard surface mail instead of via registered mail as is required **by law**.
 - We tried to address this matter with the JMPD directly and got spun a load of nonsense by them.
 - We have taken the matter to the RTIA and Department of Transport and await a response.
 - We are ready and able to go to court (and will win) on this if the RTIA/RTMC/DoT does not do the right thing by a deadline set by the RTIA themselves of 1 September 2010.
- We then selectively exposed the fact that recent AARTO infringement notices had been sent out in a garbled fashion so that they make no sense at all.
 - We addressed all of this issue with the RTIA on Monday 16 August and have received no response apart from “we know about the problem and are addressing it”. Garbled, nonsensical infringement notices continue to be received by the public.
 - The problem has apparently been caused by an “IT glitch” which has caused the incorrect mapping of data fields into AARTO infringement notices, thereby invalidating them.

All this time, we knew about the fact that the RTMC and the JMPD were about to engage in a court battle with one another but we chose to keep quiet about this seemingly childish squabble due to the severe impact that we could see arising of making this public. After all, how are ordinary citizens expected to react when they see two governmental – law enforcement agencies having a go at one another and fighting about **money**? Respect for law enforcement and the law itself simply goes out of the window when this happens.

But this is not really a childish squabble at all and the matters that are to be addressed are actually very serious.

Was it in the public interest to expose this “matrimonial fight”?

No or we would have made the matters public a long time ago.



BUT...

Now that Director Gerneke has decided that it is, after all in the public interest to know what about his department considering a “divorce” from the RTMC/RTIA, well perhaps the truth needs to be told.

He has also decided to **publicly confirm** what has been said by many and denied by traffic authorities all along. **The JMPD’s and Johannesburg Metropolitan Municipality’s ONLY motivation in traffic law enforcement is generating massive revenue for the City.** This is equally true of **most** other traffic authorities around South Africa.

This fact was also alluded to in a conversation between me and a high ranking Metro Police official who was equally horrified at the City’s outright admission to this fact by citing their **drop in revenue** allegedly caused by the implementation of AARTO.

Observing the squabbles between the JMPD and the RTMC as an “outsider”, we can say that it closely resembles a custody battle where both parties feel that they are separately the best custodian the baby called our traffic laws – for their own ends and financial benefit, as well as in the interests of the so-called contractors to these organisations who derive massive revenue in their own right. It is exceedingly clear that the custody battle is **purely financially motivated**.

That the JMPD and the RTMC/RTIA are going to end up in court litigating against one another is now a given and the ultimate loser here is going to be the public, and more seriously – road safety, which is what both of these institutions are *supposed to* be working towards. Why has this come about? One reason and one reason alone – the pursuit of the big bucks.

The matters between the two include:

- The RTMC/RTIA intending to sue the JMPD for some R98 million in lost AARTO revenues, which is a complete joke since it was already easily more than 3 times that much in December 2009 when **we brought the matter to the RTMC’s attention**. We did not do this to simply stir the pot, but to point out that there were serious management deficiencies in the current system.
 - The RTMC were previously unaware of it and again claimed ignorance on 24 January 2010 when we brought it to the attention of a high ranking team at the RTMC who included the then CEO, the Chairman, the CFO, the CIO and observers from Business Against Crime.
 - At that stage, the *estimated* figure was no less than R300 million. But that was **before** the startling revelations of the JMPD’s stated monthly postal costs! Now you can move the figure up by a quantum, almost inconceivable leap!
 - We brought this matter to the attention of the RTMC/RTIA because we had observed the law not being complied with by the JMPD and the AARTO process being turned on its head by their apparent unwillingness to comply with it.
 - Combined with this was the RTMC/RTIA’s impotence in dealing with the actions of the JMPD in misapplying AARTO. The JMPD have been allowed to continue to be a law unto themselves with no intervention from government, including the RTMC/RTIA and Department of Transport as well as other government departments.



- In apparent retaliation, the JMPD is now proposing to take the RTMC/Department of Transport to court so they can pull out of the AARTO system citing “loss of revenues” allegedly caused by non-compliance of motorists in paying their traffic fines to them as the reason.
 - A report is apparently to go before the Johannesburg Metropolitan Municipality’s council shortly, motivating the rationale behind reverting to the much easier to administer Criminal Procedure Act which allows the JMPD to terrorise motorists in roadside fine checks.
 - This move comes on the heels of the Cape Town Metropolitan Municipality/Police *almost* having instituted legal action in the High Court to prevent their inclusion in the AARTO system from 1 July 2010.
 - In both actions – only one thing is cited – **revenues in fine income for the municipalities**.

It is more than clear that the biggest single bugbear in this whole wrangling is that of revenue and not a single party has stated any differently. It is more than apparent that traffic law enforcement in South Africa is motivated by nothing else and claims of it being aimed at improving road safety are mere window dressing of epic proportion.

The fact is that traffic fine income in South Africa has enriched municipalities and private businesses hugely – some of which have even gone as far as listing on the stock exchange and this is now a **multi-billion Rand** industry. The involvement of private enterprise in traffic law enforcement has continued to grow unchecked – to the extent that one can be forgiven for noting and observing that traffic law enforcement agencies are now run by private companies – almost in their entirety.

This is particularly true in the field of “electronic enforcement” or “camera fines” where equipment, vehicles and operational equipment and costs are covered by these companies – supposedly in return for a simple processing fee per fine generated. But when one digs deeper, it would seem that there are other rewards involved. Why else would these private “contractors” so virulently encourage people to comply and pay up and additionally supply number plate recognition (NPR) equipment to the likes of the JMPD for use in roadblocks – free of charge?

Getting back to the news article on News24.com, there are a number of questions that arise out of the contents and statements apparently made by Director Gerneke. Two things have become apparent from these statements and the recent actions of the JMPD.

1. The understanding of the AARTO Act itself seems to be poorly lacking on the part of all concerned, but none more so than the JMPD. Provisions in the Act are regularly ignored or selectively applied and *interpretations* of simple black and white provisions of law are regularly allowed to take place.
2. Traffic fines are viewed as nothing more than an income generation tool for municipalities and government alike. **Budgets** are regularly referred to, failing to acknowledge that if traffic law enforcement strategies were not inherently (and purposefully) flawed, the reduction in fine income would indicate that strategies were starting to have an effect. Obviously this would have to be coupled with a reduction in fine issues but if **budgets** exist then it is clear that there is no intent to focus on reducing incidents of violations of the law but merely *catching* those who do violate it and making them pay.



To prove that these two points are in fact the truth, we offer the following for consideration:

- The JMPD began applying regulation 10 (3) of the AARTO regulations by tripling fine values from the 1st of April 2010, when the so-called “pilot phase” of AARTO came to an end. Clearly the JMPD saw fit to make up their “losses in revenue” by getting those who do cough up when they receive a fine in the post to pay three times the value that an “ordinary” fine would cost ahead of the points-demerit system to which the provision applies coming into effect next year, on 1 April 2011.
- Had the JMPD actually followed the processes of the AARTO Act as they should have from day one, there would have been **no loss in revenue at all**. In fact they would have already recovered close to 100% of the fine values they issued up to the end of 2009 and would be well on their way to recovering those from 2010 already. **BUT** they would have had to have stuck to procedure and legislation.
- Payfine.co.za, a joint venture by the JMPD and Syntell (Pty) Ltd, a so-called contractor of the JMPD, still offers discounts of 50% for fines that were issued as far back as March 2009 when the JMPD became embroiled in the AARTO system. The same goes if one goes into the JMPD offices to pay.
- Director Gerneke unilaterally took the decision to cease sending out AARTO infringement notices via legislated means of registered mail sometime in June 2010, quoting the R18 per notice fee charged by the SA Post Office as being too expensive for the JMPD to pay. He also made specific mention of the bags and bags of uncollected/unclaimed notices that come back from the Post Office as a good reason to cease using registered mail.
 - But the fact is that regardless of whether a person collects a registered notice or not, the AARTO Act makes **specific provision** for this eventuality.
 - Section 30 (2) of the AARTO Amendment Act 1999 specifically states:

*“A document which is sent by registered mail in terms of subsection 10 (1), is **regarded to have been served on the infringer on the tenth day after the date which is stamped upon the receipt issued by the post office which accepted the document for registration, unless evidence to the contrary is adduced, which may be in the form of an affidavit.**”*
 - The argument of service not having taken place and the so-called “AARTO clock” not kicking in, as was presented by Director Gerneke in the News24.com article is therefore completely invalid. That is of course, **provided** that the JMPD had complied with the Act and sent the notices out via registered mail, **which they have not of late**.
- Director Gerneke goes on to say that the JMPD’s postage costs amount to R10 million a month.



- Well, at R18 per infringement notice (quoted to us by him) that equates to well over half a million individual fines **per month**, or **555,556** to be precise. And that is just for the fines issued by post, not those issued by traffic officers.
- Taking the calculation of the JMPD's portion of the fine, which is the full portion of the discounted amount, and applying an average of the five fine amounts (already "discounted"), which works out to R437.50, this equates to a stunning R243, 055, 556 or **nearly a quarter of a billion Rands per month**.
- Even if only the lowest amount payable (R125 after "discount") were to apply, this equates to R138, 888, 889 per month which, by way of example represents **86% of Cape Town's ANNUAL** traffic fine revenue **in just one month**.
- The JMPD has previously boasted a "compliance rate" of somewhere in the order of 50%-60% - largely thanks to their highly effective and intimidatory road block methodology where motorists are detained, mostly illegally and forced to pay their fines at the roadside under threat of arrest. This methodology has many Johannesburg motorists so terrified that they regularly ask us what will happen to them in a roadblock if they have outstanding AARTO fines.
- The AARTO Act has mechanisms in it to **increase compliance**, not decrease it and these mechanisms *should be* extremely effective, **BUT** they need to be applied correctly and therein lays the problem.
- If the collection or compliance rate has dropped by the claimed 67%, then this would mean that the JMPD is now only collecting 21.5% of all of the fines it issues. This is a little difficult to believe, but at the risk of calling them outright liars, this equates to somewhere in the order of R 29,861,111 per month and that represents a profit of nearly R20 million a month or R240 million a year of **realised income**, but before paying their contractors.
- This figure is of course grossly deflated but there will be **no transparency** emanating from the JMPD or the Johannesburg Metropolitan Municipality on this matter and **only an independent audit will reveal all of the facts**.
- If this were true and the alleged R27.50 per infringement notice issued "processing fee" were paid to "contractors", then R15, 277, 778 would have to be paid to the "contractors" monthly because they are allegedly paid for all fines issued, not all fines paid.
- That would leave the JMPD with a *mere* R14.7 million a month to pay over to council. Is it any wonder that they are griping? Their contractors make way more than the council does under their claimed statistics!
- As was said by Mark Twain – "There are three kinds of lies. Lies, damned lies and statistics."



1. The complete mismanagement and incompetence surrounding the entire process by the RTIA/RTMC/Department of Transport.
2. The fact that the JMPD has been allowed to operate autonomously during this process whilst the TMPD's processes were actually run by the RTIA.
3. The fact that no-one has applied their minds to what the Act says and authorities have been allowed to apply their own *interpretations* to the provisions laid down in the Act.
4. The focus on saving lives is simply not there. The entire process is money-driven and whilst "budgets" for fine income exist within traffic authorities, nothing is going to change.
5. The minister of transport, despite apparently being dead set on addressing road fatalities in South Africa has got egg on his face over and over again in the AARTO Act's now 12 year history. He has done little to combat the growing problem of what is tantamount to nothing short of greedy behaviour and corrupt activities of the RTMC, municipalities and traffic authorities in this country. Simply *investigating* the RTMC's mismanagement and misappropriation of funds is nowhere near all that needs to be done.
6. We regularly receive emails and phone calls from people who are fed up with calling "0861 AARTO1", only to have an automated answering and queuing system put them on hold for upwards of 30-60 minutes and then still not put them through to a "consultant".
 - a. This is because there is simply insufficient staffing at the RTMC to answer these calls.
 - b. The JMPD simply do not answer their phones for the most part.
 - c. JPSA has direct contact details for top-ranking officials in the RTMC and RTIA and mostly, queries and even offers of assistance from us go ignored by them. Often they engage in rhetoric and patronising behaviour by making such statements as "I look forward to a good working relationship with JPSA to assist in rolling out this necessary system."

It is unreasonable of anyone to expect the phenomenon of municipalities deriving massive income from traffic fines to simply be relinquished when it represents such an easy and prolific source of additional income.

Someone, somewhere has grossly failed to get the message across to the JMPD and others that the AARTO process, if applied correctly will lead to a higher "recovery rate" initially, but if it is successful then it will lead to diminishing income due to greater road user compliance. Then again, maybe this has in fact come across and does not fit in with the municipalities' objectives of revenue generation.

Perhaps this phenomenon could begin to explain why it is that the JMPD has, from inception, chosen to grossly misapply the AARTO Act to discredit it and prevent its implementation.

A bit of pain now to achieve one's ultimate plan of dismantling what could be a very effective tool in combatting road fatalities has got to be weighed up against the associated ultimate loss of revenue.

But the extremely deficient and poorly thought out AARTO Act has actually facilitated this, as well as encouraged corruption, even though this may not have been the intent.



If this sounds like a conspiracy, it is because it is one.

JPSA remains committed to the concept of a points-demerit system which is properly thought out and implemented from day one, but believes that the current AARTO Act needs to be scrapped and re-drafted from scratch. The current legislation and participants need to be relieved of their responsibilities and replaced with legislation and people who are committed to achieving road safety objectives, not lies, deceit and gross incompetence aimed at driving massive revenue models and personal enrichment.

State owned and run companies like the RTMC should be dissolved and government should establish and run internal agencies which are monitored by external "watch dogs" like JPSA.

The RTIA, whilst supposedly being one such agency currently reports to and their staff are paid by the RTMC and this is not a desirable or acceptable situation. Saying that it reports directly to the Department of Transport is a half-truth.

An interim operational protocol must also be established and maintained to prevent the likes of the JMPD reverting to the use of the Criminal Procedure Act and using their old terror tactics of threatening people with arrest and detention if they don't pay up – at least on AARTO fines and those issued in the future.

The clear impotence of the RTIA must be addressed and all traffic authorities in this country must become answerable to one national authority – concerned with road safety – not income generation.

Private oversight and monitoring structures such as ours should be given official recognition, powers and funding by government to keep the process clean and ensure that equity and fairness is established and prevails in the enforcement of traffic laws of South Africa.

A full and truly independent financial audit of the JMPD and City of Johannesburg's operations MUST be urgently commissioned and we hereby call for this.

Most importantly, it is way past time that the government started listening to what is being said to them by organisations such as ours and properly observing what is going on. Engaging in the same arrogant behaviour that they have adopted to date is getting everyone nowhere fast and the ultimate losers are innocent civilians who are being slaughtered on our country's roads on a daily basis, as well as law abiding motorists who have to endure the inconsiderate and dangerous practices of others who have no regard for their safety – just because they know that the only thing they will be prosecuted for is a speed violation – by camera.

Yours Sincerely,

A handwritten signature in black ink, appearing to read "Howard Dembovsky", written over a faint outline of the South African map.

Howard Dembovsky

National Chairman - Justice Project South Africa