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LawTalk Blog



Been charged with a driving offence and need to keep your licence?

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We are asked every day what people can do to keep their licence when they have been charged with a serious driving offence. One option to consider is a “trifling application”.

A serious driving offence can include:

- Drink driving
- Drug driving
- Driving whilst disqualified
- Reckless and dangerous driving

What is “the special licence”?

Many people refer to a “special licence”. First of all there is no such thing as a special licence after disqualification that permits you to drive for work only. You cannot get an exemption to drive just for work.

"First of all there is no such thing as a special licence after disqualification that permits you to drive for work only."

When you are disqualified, you cannot drive at all.

It's important to note that the consequence of **driving while you are disqualified** is a term of imprisonment.

There are mandatory licence disqualifications associated with serious driving offences. This means the court's hands are tied and they must impose a minimum mandatory licence disqualification.

For example, if you are charged with "careless driving" the legislation states that:

"the court must order that the person [charged] be disqualified from holding a drivers licence for [a] period, being not less than 6 months".

However there are some circumstances where a "trifling application" can be made with a driving offence.

Look at this example of a trifling application being made

We're going to look at the example in relation to a prescribed concentration of alcohol (PCA) offence or drive under the influence (DUI) offence.

Although both are commonly known in the community as drink driving, DUI is far more serious as police allege that you are so much under the influence of intoxicating liquor or a drug that you are incapable of exercising effective control of a vehicle.

The maximum penalty for a DUI first offence is a fine, or imprisonment for not more than three months. For a subsequent DUI offence the maximum fine goes up as well as the maximum term of imprisonment to not more than six months.

There is no term of imprisonment associated with a PCA offence; just fines and periods of disqualification.

In relation to PCA offences there is however, an exception to the mandatory minimum disqualification.

The law states the minimum mandatory disqualification periods cannot be reduced or mitigated in any way or be substituted by any other penalty or sentence unless "in the case of a first offence, the court is satisfied, by evidence given on oath, the offence is trifling".

Then the Magistrate can reduce the prescribed minimum period to not less than one month. This is referred to as a trifling application.

As you would imagine this is a highly litigated area of the law; that means it is fought in court a lot. Licences are important to people and they are often willing to pay a lot of money to ensure they keep it.

There are therefore several cases where the courts discuss what is and isn't trifling. Most importantly the courts have not set any hard and fast rules about what may be trifling.

Examples of what has been found to be trifling are:

- a defendant with a concentration of alcohol higher than the prescribed limit, who moves their car from one side of the car park to a better lit space while waiting for a taxi; or
- a defendant with a concentration of alcohol higher than the prescribed limit, who only traveled a distance of a few metres to re-park a car that was parked incorrectly that may have caused an accident.

It is always important to seek legal advice from a solicitor experienced in [criminal law](#) and traffic offences.

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