GILSHENAN & LUTON
LEGAL PRACTICE



Application to remove driver's licence disqualification

Date: Monday December 9, 2019

If you are convicted of specific driving offences, the court can cancel your driving licence and impose a disqualification period. The licence disqualification period can range from one month to an 'absolute disqualification', meaning you are permanently barred from driving.

When can I apply to have a disqualification removed?

If your licence is disqualified by the court for **more** than two years (or if for various offences, the cumulative disqualification period is longer than two years), then after you have served a minimum two years of the disqualification period, you can apply to the court to remove the disqualification.

How to apply

To apply to remove the disqualification, you must file an application and supporting affidavits.

The court will consider whether, on the balance of probabilities, it is appropriate to dispense with the disqualification period imposed by the original Judge or Magistrate. The onus is on you to prove that it is appropriate to remove the disqualification.

The application forms can be obtained from a Magistrates Court Registry.

Factors that are taken into account

Generally, mere inconvenience from not having a licence is not an acceptable reason to remove your licence disqualification. Some level of inconvenience can always be expected to flow from a disqualification.

That said, a disqualification that is too long may affect a person's economic and/or social wellbeing.

The factors relevant to determinating whether to grant the application include:

- the nature of the offence;
- your character (including traffic and criminal history);
- your conduct after the disqualification;
- whether you have shown remorse;
- what rehabilitation you have participated in; and
- whether the disqualification has been sufficiently lengthy to satisfy the community's expectation of punishment.

How can you show remorse and attempts to rehabilitate?

To satisfy these factors, people often undertake driving courses or, if the disqualification related to alcohol or drugs, undertake rehabilitation programs in order to express insight and remorse. This shows the Judge or Magistrate that they would not be a danger to the community if they were permitted to drive. The court also looks at any offences that have been committed since the disqualification.

If you have a bad traffic history or spent some of the two-year disqualification period in prison, you may want to wait longer than two years to apply. This is because the court may consider that insufficient time has passed to demonstrate that the licence should be returned.

If your application is granted, don't drive immediately

If the court grants your application, you can't immediately drive. You will have to ask the court registry for a copy of the order and use it to apply for a licence at the Department of Transport and Main Roads. This licence must be issued prior to driving any vehicle.

Get help from a traffic lawyer

It is important to obtain legal advice before making an application to remove a licence disqualification because if the application is refused, then you must wait another 12 months before making a new application. Seeking legal advice will ensure that your application is completed in a manner that maximises the potential of success.

At Gilshenan &Luton, we can assist you in understanding your prospects of having your licence returned, drafting affidavits in support of your application and advocating for you in court.

Contacting Gilshenan &Luton

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This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.