In light of the case law and statute law in this area, what advice would your group give to Patrick? Set out the reasons supporting your answer and post it to the “Insurance” Discussion Board.

1. Is Patrick receiving sound advice?
Patrick is receiving advice from a cluster of people who is not able to see the problem in the whole context, with a biased and limited vision of the responsibilities and consequences, and bounded by a particular interest. As conclusion, the advice that Patrick is receiving is not appropriate.

Nevertheless, this case poses a particular problem in some jurisdictions where the young people are overcharged for insurance premiums. This is decided policy which aims to discourage the use of vehicles for inexpert and young people. It has advantages as well as disadvantages; between the first, a lower accident rate due to young people issues (e.g.: related with alcohol), and between the disadvantages it delays the gain of early experience, and it pushes young people to think in alternative methods to deal with. Finally, these alternative methods sometimes are in the grey zone of ethics and/or legal considerations, and sometimes cross this line due to the lack of knowledge, experience, etc.

2. How will the insurance company find out the truth anyway?
It is a difficult situation for the insurance company. It seems that truths in the insured declaration could not work and the company need some process that it could provide feedback about the declaration. The company could figure out easily the truth but with serious by-side effects:
- The cost-effectiveness of the methodology establishes serious limitation. The companies verify the record for the insured it is easy, but go ahead and try to verify it for each insured has children in age of driving, relatives, friends with record problems, etc, it could be very costly. In addition, it does not fix the problem, only add more certainty.
- Check the owner of the car. This has strong limitation. If the owner is the young person it presents a serious indication but it does not prove anything (but based on this sign the insurance company could not admit the application). In other case Patrick could sell the car to his mother and continue driving the car maintaining the declaration of occasional driver. This option looks to have a huge limitation.
- Install a log in system in the car to record (e.g.: fingerprints) who drive it. This could be costly, and addition to present some concern related with individual privacy, rights and freedom.
- Witnesses; this could help in case of claim, but ineffective in other case. In addition, it could represent limitations in case the insured declared as occasional driver the young person because the incident that triggers the claim could be part of this occasional time.

3. **Or perhaps, Patrick should simply sell the car to his mom for a nominal sum, say $100? Then Patrick’s mom should have no trouble stating she owns the car and Patrick is just a driver.**

The act of selling the car for a nominal sum does not look to have something wrong in itself. If Patrick’s mom informs to the insurance company the use that the car will have, it should not be a problem; but this manoeuvre aims to hide that Patrick will drive the vehicle most of the time, maybe all time. As conclusion, if the change of owner has the objective of to hide/change information, it represents a misrepresentation. This hidden intention is the base for claming under the absence of insurable interest argument, misrepresentation, and fail to disclose data (s.613 of the Insurance Act).

In addition, this manoeuvre, if it is demonstrated, could support the insurable interest argument by the insurance company. Finally, if Patrick’s mom declares the truth to the insurance company, probably the insurance premium will be more expensive than if the car and the insurance policy is owned by Patrick.

4. **What advice would you give someone in Patrick’s position?**

We would give to Patrick the following flow chart (represented in a table):

<table>
<thead>
<tr>
<th>Step</th>
<th>Question</th>
<th>Answer</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Do you need a car to work?</td>
<td>Yes</td>
<td>Go to step 2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>No</td>
<td>Go to step 3</td>
</tr>
<tr>
<td>2</td>
<td>Can you agree with the company some benefit (e.g.: car, insurance)</td>
<td>Yes</td>
<td>You get it</td>
</tr>
<tr>
<td></td>
<td></td>
<td>No</td>
<td>Go to step 6</td>
</tr>
<tr>
<td>3</td>
<td>Do you know the risk and cost associated to a car?</td>
<td>Yes</td>
<td>Go to step 4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>No</td>
<td>Learn about cars cost and risk, re-evaluate decision, go to step 1</td>
</tr>
<tr>
<td>4</td>
<td>Are you willing to assume all risk and cost associated to a car?</td>
<td>Yes</td>
<td>Buy the car (*)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>No</td>
<td>Go to step 5</td>
</tr>
<tr>
<td>5</td>
<td>Can you share the car (cost, risk, etc) with someone else?</td>
<td>Yes</td>
<td>Buy the car (**)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>No</td>
<td>Re-evaluate decision, go to step 1</td>
</tr>
<tr>
<td>6</td>
<td>Do you know the risk and cost associated to a car, and did you consider them when you apply or accept the job?</td>
<td>Yes</td>
<td>Buy or share the car (*)(**)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>No</td>
<td>Go to step 7</td>
</tr>
<tr>
<td>7</td>
<td>Re-evaluate decisions about job, car, etc.</td>
<td>Yes</td>
<td>Go to step 1</td>
</tr>
</tbody>
</table>
are you willing to proceed?  No  Re-evaluate the job, alternatives, etc. Go to step 1

(*) in relationship with the insurance for the car, Patrick should declare what he knows and foresees it will correspond to the use of the car.
(**) agree the term of condition and use of the sharing for the car, consider (*).

5. What does the Insurance Act state?
The Act, Subpart 5, regulates about automobile insurance. Section 613 states the insurable interest conditions to avoid illegality related to misrepresentation, fraud or violation of condition. This section specifically states as invalid any claim based on false data or fails to disclose data in prejudice of the insurer:

Misrepresentation, fraud or violation of condition
613(1) If
(a) an applicant for a contract
   (i) gives false particulars of the described automobile to be insured to the prejudice of the insurer, or
   (ii) knowingly misrepresents or fails to disclose in the application any fact required to be stated in the application,
(b) the insured contravenes a term of the contract or commits a fraud, or
(c) the insured wilfully makes a false statement in respect of a claim under the contract,

a claim by the insured is invalid and the right of the insured to recover indemnity is forfeited.

(2) No statement of the applicant may be used in defence of a claim under the contract unless it is contained in the signed written application for the contract or, when no signed written application is made, in the purported application, or part of the application, that is embodied in, endorsed on or attached to the policy.

(3) No statement contained in a purported copy of the application, or part of the application, other than a statement describing the risk and the extent of the insurance, may be used in defence of a claim under the contract unless the insurer proves that the applicant made the statement attributed to the applicant in the purported

In addition, such as the case Blue Seal Paving Stone Inc. v. Western Union Insurance Canada Inc., [2000], the s.562 states the insurable interest conditions to avoid illegality:

Insurable Interest
562(1) Subject to subsection (2), if at the time a contract would otherwise take effect the insured has no insurable interest, the contract is void.

(2) A contract is not void for lack of insurable interest
(a) if it is a contract of group insurance, or
(b) if the person whose life is insured has consented in writing to the insurance being placed on the person’s life.
If the person whose life is insured is under the age of 16 years, consent to insurance being placed on the person’s life may be given by one of the person’s parents or by someone standing in loco parentis to the person.

6. Have the courts already ruled on cases such as Patrick’s?

The cases:
- *Dowe v. Richards*, 1999 NSCA 130

look very similar to Patrick’s case; the courts ruled based on different sections of the Act and previous cases; the based on that, we could infer that the court could rule against Patrick’s behavior.

Therefore, the very similar case (in case of Patrick’s accident)
- *Schoff v. Royal Insurance Co. of Canada*, 2002 ABQB 881 (CanLII)

Looks not at all in the same line; at least the insurer company failed to demonstrate insured misrepresentation; the court ruled:

“[116] Charles Goyan, at the time of the accident, was covered by the policy of insurance obtained from Royal by his mother, since he drove with her consent.” …”Because Charles drove with the consent of Mrs. Goyan, Royal is required to satisfy the Plaintiffs’ claims to have the insurance money payable under Mrs. Goyan’s policy applied towards satisfaction of the judgment against the insured, Charles Goyan, to the extent of the statutory limits. [117] Royal is not entitled to take advantage of the misrepresentations by Mrs. Goyan so as to void the policy of insurance in relation to the portion of the judgment that exceeds the statutory limits. Royal’s knowledge of the misrepresentation as to the previous accident, in the context of the information concerning Mrs. Goyan’s three vehicles, and only one declared driver, was sufficiently indicative of something more to be tantamount to notice of the unrevealed. Royal is therefore required to satisfy the judgment of the Plaintiffs to the extent of the insurance coverage.

[118] I reserve jurisdiction to deal with any issues which arise concerning implementation of this judgment, including issues as to costs. I am grateful to counsel for their able assistance.”

In the case

Also we could find a similar case in principles.


Cases such as:
look similar in the misrepresentation of information; based on that, we could infer that the court could rule against Patrick’s behavior.

The case *Murphy v. Casualty Company of Canada, White, Singleton and Pittman, [1987]* is very interesting, it looks similar to Patrick’s case with and addition related with the same name between father and son; the court ruled against the insurance company.

Finally, case cites the following cases as supporting for the defendant, the insurance company:

7. Is there anything Patrick can do to save himself money while NOT jeopardizing his coverage?

Patrick has alternatives to evaluate:
- Shopping of car insurance through phone and internet;
- Enter in an agreement with the company for whom Patrick works covering the insurance.
- Enter in an agreement with some insurance company for buy an insurance package. A broker will help.
- His mom enters in an agreement with some insurance company for buy an insurance package. A broker will help.
- Try to keep a good record;
- Take driving courses;
- To buy neither new nor old car; and
- Payment options could decrease the amount of money to pay.

**Works Consulted**
