

# Section 167 of the Wills, Estates and Succession Act (WESA)

Information paper - Full technical version

Section 167 of the **Wills, Estates and Succession Act (WESA)** enables the Public Guardian and Trustee (PGT) to step in and protect the property of someone who has died. This authority enables the PGT to carry out its mandate to act when there is no one else willing and able to manage the person's estate.

Section 167 of **WESA** outlines the PGT's authority before a grant of administration is issued by the court, essentially giving the PGT broad powers to act on behalf of the estate based on its intention to apply for and obtain the grant.

## Powers before grant issued

**167 (1)** If, after investigation, the Public Guardian and Trustee

- (a)** believes that a person has died, and
- (b)** intends to make an application under section 164 (2) for a grant of administration,

the Public Guardian and Trustee may, before or after making the application or filing the small estate declaration and before a grant of administration is issued, act under subsection (2).

**(2)** The Public Guardian and Trustee may do any or all of the following as if a grant of administration of the deceased person's estate had been issued to the Public Guardian and Trustee:

- (a)** arrange the funeral of the deceased person;

- (b)** make an inventory of the deceased person's estate;

- (c)** take possession of, safeguard and dispose of the deceased person's estate.

**(3)** In acting under this section, the Public Guardian and Trustee

- (a)** has a right to all information and records to which or in respect of which the deceased person had custody or control or would have been entitled to, and

- (b)** may require a person to disclose that information or produce those records to the Public Guardian and Trustee.

**(4)** A letter signed by an authorized signatory of the Public Guardian and Trustee indicating that the Public Guardian and Trustee is acting under this section is conclusive proof of the Public Guardian and Trustee's authority to exercise the rights and powers conferred by this section.

**(5)** The Public Guardian and Trustee or an agent, attorney, employee or other person acting on behalf of the Public Guardian and Trustee is not personally liable as an executor de son tort by reason of exercising the powers conferred by this section.

**(6)** This section does not relieve the Public Guardian and Trustee from

- (a)** making an application for a grant of administration, **or**

- (b)** filing a small estate declaration under Division 2 [Small Estate Administration] of this Part.

A primary purpose of s. 167 is to let the PGT take immediate, pre-grant action to secure a deceased person's assets. This means the PGT has authority to collect and safeguard estate assets right away, instead of waiting for formal court approval.

The conditions of s. 164 of **WESA** must be met before the PGT may invoke the powers of s. 167. Section 164 indicates the PGT may administer:

- where a person has died while living, or with assets, in British Columbia, and that person died:
  - without a will passing all or part of their estate, **or**
  - with a will but without appointing an executor willing and able to apply for the grant or where the executor's whereabouts are unknown.

As such, the PGT will make an initial investigation of an estate to confirm these conditions are met before invoking the s. 167 powers.

The powers under s. 167 are meant to be temporary. They are designed to prevent the loss, theft, or wastage of estate assets in the period between a person's death and the formal appointment of the PGT as administrator. This is especially important because the PGT acts as administrator when there is no other suitable person who is willing or able to administer the estate, and is particularly critical where the beneficiaries include adults who are mentally incapable or children.

Once the PGT invokes the s. 167 powers, it must still apply for a formal grant of administration to complete the task of administration (see **WESA s. 167(6)(a)**). In some cases, the PGT may later hand over control of the estate (and, in due course, the estate assets) to a family member or executor who proves they have the right to administer the estate. Such individuals are not always easy to identify or locate at the outset which underlines the importance of the unique role of the PGT in these scenarios.

When necessary or when a request is made, the PGT will issue a letter signed by an authorized representative confirming that it is acting under s. 167 (see **WESA s. 167(4)**). This letter serves as conclusive proof of the PGT's legal authority to use the powers granted under this section.

To date, the PGT has not sought court intervention to enforce this provision. However, the PGT could seek to have the court intervene where a party refuses to deal with the PGT or withholds an estate asset in contravention with this provision. Additionally, if a third party holding estate assets fails to comply within a reasonable time with a request from the PGT, and instead retains the assets, the PGT would have a fiduciary duty to consider the consequences of such non-compliance. If the assets lose value as a result, this duty would include considering a claim against the third party for the resulting loss.

**Prefer a simpler version?** Read the [plain language paper](#).

# Contact the Public Guardian and Trustee

## Estate and Personal Trust Services

700-808 West Hastings Street  
Vancouver, B.C. V6C 3L3

<b>Phone</b>	604-660-4444
<b>Fax</b>	604-660-0964
<b>Email</b>	<a href="mailto:estates@trustee.bc.ca">estates@trustee.bc.ca</a>
<b>Website</b>	<a href="http://www.trustee.bc.ca">www.trustee.bc.ca</a>

## Toll free calling

Toll free calling is available through Service BC.  
After dialing the appropriate number for your area  
(see below) request to be transferred to the Public  
Guardian and Trustee.

<b>Vancouver</b>	604-660-2421
<b>Victoria</b>	250-387-6121
<b>Other areas in B.C.</b>	1-800-663-7867

## PGT hours of operation

Monday to Friday 8:30am to 4:30pm