

# FARMERS' ADVOCATE OFFICE



**Annual  
Report  
2015-16**

# MESSAGE

from the

# Farmers' Advocate of Alberta

**Dear Minister Carlier:**

Spring 2016 marked 4 years in my position as Farmers' Advocate. I am very proud that our team has continued with the very important work that this office has undertaken for farmers, ranchers and landowners since 1973.

Our work over the past year has continued to be quite varied. We have seen a significant increase in requests for advice and assistance on files relating to land and energy surface lease matters as the oil and gas industry has suffered from cash flow reductions due to lower world prices.

Our team at the FAO includes:

- Assistant Farmers' Advocate, Janet Patriquin;
- Rural Engagement and Communications Specialist, Jeana Schuurman;
- Energy, Utilities and Policy Specialist, Michele Del Colle;
- Farm Implement Inspector, Bernie Yakimyshyn;
- Appeals Coordinator, Brenda Tangen; and
- Administrative Coordinator, Roseline Soparlo.

Together, this team has a tremendous assortment of skills and experience to help the FAO provide:

- timely, relevant and accurate information;
- active and process advocacy;
- problem solving;
- enhanced communication and outreach and online tools; and
- greater interaction with regulators and industry groups.

Our work continues to take us to all corners of the Province of Alberta. We attempt to leverage the work of our small team by sharing file outcomes with farmers, ranchers, landowner groups, industry and regulatory contacts, Synergy Groups and other advocates and advisors so that our clients can be aware of, and take current trends and issues into account when planning.

As Farmers' Advocate, I regularly and actively engage in discussions and meetings with the Alberta Energy Regulator, the Surface Rights Board, the Alberta Association of Municipal Districts and Counties, and other provincial groups and organizations with a view of ensuring that the interests of farmers and ranchers are highlighted and taken into consideration. I continue to be involved as a board member for Synergy Alberta as it supports local groups who work to proactively and cooperatively address the mixed interests and concerns of farmers, ranchers, landowners, regulators, municipalities, and industry.

This report provides a summary of our activities from April 1, 2015 to March 31, 2016. As in the past, financial statements from the Farm Implement Compensation Fund are enclosed as required by legislation. The FAO is grateful to the Ministry of Agriculture and Forestry for its continued support of the work of our office and I look forward to continuing our role working with and for Alberta's farmers and ranchers.

**Peter J. Dobbie, Q.C.**  
**Farmers' Advocate of Alberta**

# RURAL DISPUTES

Rural Disputes is the broad and overarching category we use to describe our role in a wide variety of issues affecting Albertan farmers and ranchers. Rural Disputes include conflicts between neighbours, agri-businesses, agricultural tenants, municipalities, or other levels of government. These files come to us through word of mouth, direct community engagement, the Ag Info Centre, the Minister's office, or other government departments.

Our approach to engaging in Rural Disputes will vary from file to file, and staff must utilize discretion to determine what actions best suit a file. Some files require research and information dissemination, while others will require direct engagement with affected parties through mediation or advocacy. What is consistent from file to file is that we strive to provide a high level of creative and helpful care for every person who contacts our office.

When a file comes in, FAO staff start by reviewing the relevant contract, legislation, regulation, or municipal bylaws. Contract disputes continued to be a big part of our work in 2015-16. Sometimes there are unread conditions in the fine print and other times parties can disagree on the interpretation of a clause. Unfortunately, we often see scenarios where relationships break down because there was no established written agreement in place, and these disputes are more difficult to navigate. The FAO always encourages clients to capture commitments in writing.

Each year, FAO staff gain more and more familiarity with the *Municipal Government Act* and the range of interactions a landowner might have in relation to the *Act*. At each opportunity, we strive to engage with municipalities in a manner that is positive, collaborative, and relationship-oriented. Municipalities can be excellent working partners in the resolution of landowner issues, and we hope to continue to build on these relationships in the future.

Another role we take on relating to municipalities is assisting farmers and ranchers through municipal processes such as appeals. Sometimes we refer to this as "process advocacy." When the issues are particularly contentious or passionate, people can lose their points in the emotion and be unsuccessful in achieving their objectives. The FAO will help clients understand the process and provide assistance to ensure their concerns are clearly communicated.

In 2015, the government proposed changes to the *Municipal Government Act*. The bill included expanding the role of the Alberta Ombudsmen to allow for the review of municipal decisions. The findings from the *Municipal Government Act* review echoed much of what we have heard from Albertans: that they do not feel they have somewhere to go if they disagree with a decision made by their municipality.

Another piece of legislation that created controversy in 2015 was the *Enhanced Protection for Farm and Ranch Workers Act*. Representatives from the FAO attended all of the consultation sessions except one, and provided a briefing to the Minister outlining what we heard from the meetings as well as the calls and emails to our office.

The *Act* received royal assent on December 10, 2015. Starting January 1, 2016, employers were required to obtain Workers' Compensation Board (WCB) coverage for paid staff. The basic Occupational Health and Safety (OHS) Standards also came into force, which are:

- employers must take reasonable steps to provide a safe and healthy workplace,
- workers are allowed to refuse unsafe work that presents an imminent danger, and
- OHS will be able to investigate serious injuries and fatalities.

Government is still in the process of consulting with working groups on the development of industry-specific requirements related to occupational health and safety, employment standards, and labour relations.

To keep up to date on the FAO's work in rural Alberta, please follow us on Facebook and Twitter, or sign up for our email distribution list at [www.farmersadvocate.gov.ab.ca](http://www.farmersadvocate.gov.ab.ca).

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### **Nuisance Complaints - *Agricultural Operations Practices Act***

Under Part 1 of the *Agricultural Operation Practices Act* (AOPA), an appointed panel can review complaints related to agricultural odour, dust, noise, and smoke. The panel assesses whether or not the farmer's practice is a Generally Accepted Agricultural Practice. One AOPA appeal was received and dismissed in 2015-16. The possibility of an AOPA review was discussed and explored among stakeholders in 2015-16.

### **Wildlife Cost Assessment Reviews**

Under the *Forest and Prairie Protection Act*, an individual responsible for starting a fire on public land may receive an invoice from Alberta Environment and Parks (AEP) to help cover the costs of fire suppression. On request, the Wildfire Cost Assessment Committee can review invoices to evaluate an individual's ability to pay. No assessment requests were received in 2015-16, as the majority of disputes are addressed informally within AEP.

### **Agricultural Financial Services Reviews & Appeals**

The FAO is responsible for coordinating appeal and review committees for Agricultural Financial Services Corporation's (AFSC) Agri-Stability and Agri-Insurance programs. Brenda Tangen, Appeals and Reviews Coordinator, manages this program.

Under the Agri-Stability program, a producer may receive disaster relief assistance if they have experienced margin declines of more than 30%. Similarly, Agri-Insurance helps stabilize a producer's income by minimizing the financial impacts of crop production losses caused by natural hazards.

AFSC has an internal process for reviews and appeals, which addresses the majority of issues that arise. AFSC handles all financing and loans appeals internally. The FAO had 8 Agri-Insurance appeals in 2015-16. Of the 8 appeals, full payment was allowed in one.

# SURFACE RIGHTS, UTILITIES, & ENERGY

Staff at the Farmers' Advocate Office (FAO) are frequently asked if things have become quieter now at that the economy is slower. The answer is no; client trends have shifted, but the overall volume of calls is the same as it has been in the past. In previous years, many calls centered on negotiations for new developments. While these calls have decreased dramatically, we are now receiving a greater number of calls from landowners who are experiencing problems with oil, gas, or utility companies.

A significant number of calls have been received regarding the process for recovering unpaid rentals under section 36 of the *Surface Rights Act*. The number of applications for unpaid rentals has been on the rise, with the Surface Rights Board (SRB) seeing 505 applications in 2014 and then 765 in 2015. One of the concerns we've had is that some landowners are unaware that recourse is available for unpaid rentals through the SRB. To help increase public knowledge, we created resource materials explaining the section 36 process and provided verbal explanations at events throughout the province. To help address the confusion created by the well-known triage of SRB decisions concerning bankruptcy and insolvency that were issued in 2015, the FAO created a visual demonstration of the Lemke, Rodin, and Portas decisions to help provide clarity.

Another related topic that presented itself was the proper registration of builders' liens on title. When a leaseholder fails to pay its suppliers for services or materials, a lien can be registered on title. From time to time, we've received calls because the lien has been registered against the full title, rather than specifying only the leasehold interest. In these instances, we encourage landowners to write the company as soon as possible. If the error is not corrected within 180 days, the landowner can write to Alberta Land Titles to have it removed.

In the spring of 2015, the FAO launched a project to create a provincial map of surface lease compensation data, which had been an ongoing request from landowners throughout Alberta. In the fall of 2015, we decided to discontinue with the project, as few landowners had come forward to participate. There were many people seeking the compensation data, but few were willing or able to provide it.

Following Carol Goodfellow's retirement in June, the FAO hired Michele Del Colle as the Energy, Utilities, and Policy Specialist in September 2015. Michele came into her role with energy, enthusiasm, and an abundance of relevant experience. In 2015-16, Michele took on many complex landowner files and was a strong leader in highlighting policy issues to advocate for change on behalf of rural Alberta.

**The FAO encourages clients to stand their ground and seek common ground with industry.**

In spring 2015, the FAO issued an advisory regarding unilateral reductions in surface lease rentals. We had been hearing reports that landowners were being sent letters or cheques proposing or demanding reduced rental amounts, sometimes prior to the five-year anniversary. Some reductions relied on certain interpretations of clauses in the agreement relating to abandonment and reclamation, while others referenced only the state of the economy.

The FAO was clear in its position: the compensation received by landowners is based on their Loss of Use and Adverse Effect, not the state of the economy. If there is a desire to re-examine compensation rates on the 5 year anniversary, legislation obligates the company to engage in a good faith negotiation at that time. This assumes an honest two-way conversation. A landowner is under no obligation to accommodate the financial circumstances of a company. A company cannot stop paying because they have the intent to reclaim; they remain responsible for paying annual rentals until a Reclamation Certificate is issued.

We created template letters for landowners wishing to assert their rights to companies offering reduced rentals. Where this was unsuccessful, landowners were encouraged to proceed to the SRB with a claim for unpaid rentals under section 36.

The FAO continues to engage with an ever-broadening number of stakeholders, attending meetings for surface rights and synergy groups across the province as in the past, but also working intentionally to develop strong working relationships with other agencies such as the Alberta Energy Regulator, Utilities Consumers Advocate, Alberta Utilities Commission, Surface Rights Board, Rural Utilities Branch, Federation of Gas Coops, Federation of Rural Electrification Associations, Canadian Association of Petroleum Producers, and the Canadian Association of Petroleum Landmen.

### **Well Water Restoration or Replacement Program (WWRRP)**

The WWRRP is a last resort for landowners who believe their water well has been damaged by industry activities. If negotiations with the company have been unsuccessful and an investigation has been completed by the Alberta Energy Regulator (AER), a landowner may submit receipts for work undertaken (only for replacement or repair costs) to the FAO for assessment. Applications are reviewed by a panel comprised of a water specialist from Alberta Environment and Parks, an appointed peer to the landowner, and the FAO as chair.

The program is funded through levies paid to the AER. The intent of the program is to establish a water well equivalent to what existed previously, not create an improvement on a former system.

In 2015-16, the FAO received 6 applications under the WWRRP. All of the applications pertained to geophysical exploration. Four were approved, one had passed the 2 year deadline, and one was ineligible. A total of \$109,086.09 was applied for, and \$45,843.18 was awarded.

# FARM IMPLEMENT ACT

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The *Farm Implement Act* provides protection for Albertan farmers on the purchase of new farm implements.

## Warranties

The legislation requires that a new farm implement be:

- made of good material;
- properly constructed as to design and workmanship;
- in good working order;
- capable of performing under reasonable operating conditions and with proper use and maintenance the work for which it is intended in a satisfactory manner; and
- designed and constructed so as to ensure reasonable durability with proper use and maintenance and under reasonable operating conditions.

A dealer may opt to provide additional warranty, but neither party can agree to a lesser warranty than what exists in the *Act*.

When used under regular operating conditions, the implement must be able to provide the power indicated on the manufacturer's drawings.

Repair parts must be available for 10 years, and must be warranted to be free from defects for a period of 90 days.

## Obsolete Parts Directory

The FAO maintains a contact list for locating hard-to-find or obsolete farm implement parts. The Obsolete Parts Directory is available online or in hard copy.

## Repair Parts

Repair parts must be made available to the purchaser 72 hours after the request is made during the normal season of use, or 10 days after the request is made.

## Applications for Compensation

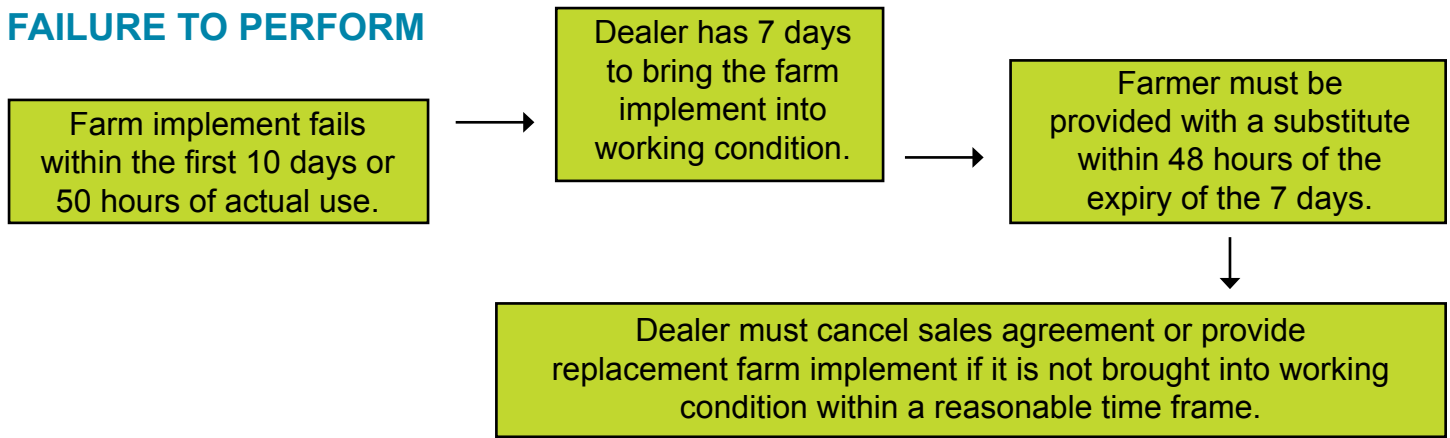
A purchaser, lessee, distributor or dealer may apply for compensation for a loss arising from the breach of a lease or sale agreement. The application must be submitted within one year of the loss. In 2015-16, the Farm Implement Board received 2 applications for compensation.

## Failure to Perform

If a farm implement fails to perform during the first 10 days or 50 hours of actual use, the owner may submit a notice of failure to perform through the FAO Farm Implement Inspector to the Minister of Agriculture and Forestry. The dealer is then obligated to bring the farm implement into working condition within 7 days. If the implement cannot be brought into working condition within the 7 day period, the dealer must provide a substitute within 48 hours of the expiry of the 7 days.

The dealer will be provided with additional time to bring the implement into working condition and, if this is unsuccessful, the dealer must terminate the sales agreement or provide a replacement implement. In 2015-16, the FAO received 6 notices of failure to perform. Four farmers have been satisfied with their repairs and have rescinded the notices. Two notices are still outstanding.

**notice of  
FAILURE TO PERFORM**



The *Act* establishes a Farm Implement Board that is funded through the licence fees paid by dealers and distributors. The funds held in the Farm Implement Compensation Fund are used to pay applications for compensation, but this money can be recovered through assessments back to dealers and/or distributors. Licences can be held until assessments are paid. This means a company cannot conduct any sales until they have settled in full.

Member	Organization
Terry Murray	Minister’s Appointment
Tien MacDonald	Association of Equipment Manufacturers
Trevor Jubenville	Agricultural Manufacturers of Canada
Cameron Kay	Western Equipment Dealers Association
Brian Chomlak	Farmer Member
John Zeinstra	Farmer Member
Remi Cyr	Farmer Member

The Farm Implement Board met three times in 2015-16, and conducted 3 hearings under the *Farm Implement Act*. One farmer filed for judicial review of a decision, but later cancelled the application. Brenda Tangen is the Farm Implement Board Secretary, and is responsible for taking minutes, coordinating hearings, and writing decisions.

The majority of complaints received by the FAO relating to farm implements are addressed before the issue escalates to the Farm Implement Board. Incoming files that do not require formal inspection are handled by Janet Patriquin. Files that are more complex or require a physical inspection are handled by our Farm Implement Inspector, Bernie Yakimyshyn. In 2014-16, Bernie Yakimyshyn handled 33 calls and resolved 32 cases. Of the 33 calls, 16 required site visits.

Farm implement dealers and distributors doing business in Alberta must be licensed. The FAO encourages farmers to check if they are purchasing from a licensed dealer, as legislative protections do not extend to unlicensed dealers. Licences must be visible at the dealers place of business.

In 2015-16, there were 144 licensed distributors and 387 licensed dealers. These lists are available on the FAO website. Roseline Soparlo manages the licensing component of the *Farm Implement Act*.





**FARM IMPLEMENT COMPENSATION FUND**

**FINANCIAL STATEMENTS**

**March 31, 2016**



**FARM IMPLEMENT COMPENSATION FUND**

**FINANCIAL STATEMENTS**

**March 31, 2016**

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## INDEPENDENT AUDITOR'S REPORT

To the Members of Farm Implement Compensation Fund

We have audited the accompanying financial statements of Farm Implement Compensation Fund, which comprise the statement of financial position as at March 31, 2016, and the statements of operations, changes in net assets, and cash flows for the year then ended, and a summary of significant accounting policies and other explanatory information.

### **Management's Responsibility for the Financial Statements**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with Canadian accounting standards for not-for-profit organizations, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

### **Auditor's Responsibility**

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### **Opinion**

In our opinion, the financial statements present fairly, in all material respects, the financial position of Farm Implement Compensation Fund as at March 31, 2016, and its financial performance and its cash flows for the year then ended in accordance with Canadian accounting standards for not-for-profit organizations.

Edmonton, AB  
May 27, 2016

  
**Bergeron & Co. Chartered Professional Accountants**

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**FARM IMPLEMENT COMPENSATION FUND  
STATEMENT OF OPERATIONS  
For the year ended March 31, 2016**

	<u>2016</u>	<u>2015</u>
REVENUE		
Farm Implement Fund Levies	\$ 155,304	\$ 137,995
Interest	<u>16,430</u>	<u>21,526</u>
	<u>171,734</u>	<u>159,521</u>
EXPENSES		
Bank charges	276	316
Compensation awarded	<u>-</u>	<u>15,615</u>
	<u>276</u>	<u>15,931</u>
<b>EXCESS OF REVENUE OVER EXPENSES</b>	<b>\$ <u>171,458</u></b>	<b>\$ <u>143,590</u></b>

**FARM IMPLEMENT COMPENSATION FUND  
STATEMENT OF CHANGES IN NET ASSETS  
For the year ended March 31, 2016**

NET ASSETS	<u>Restricted</u>	<u>Total 2016</u>	<u>Total 2015</u>
Balance, beginning of year	\$ 1,905,004	\$ 1,905,004	\$ 1,761,414
Excess of revenues over expenses	<u>171,458</u>	<u>171,458</u>	<u>143,590</u>
<b>Balance, end of year</b>	<u><u>2,076,462</u></u>	<u><u>2,076,462</u></u>	<u><u>1,905,004</u></u>
	<b>\$ <u><u>2,076,462</u></u></b>	<b>\$ <u><u>2,076,462</u></u></b>	<b>\$ <u><u>1,905,004</u></u></b>

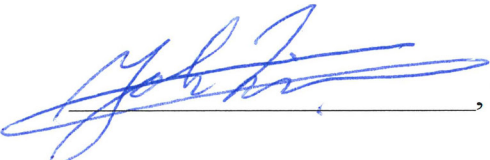
See accompanying Notes to Financial Statements

**FARM IMPLEMENT COMPENSATION FUND**  
**STATEMENT OF FINANCIAL POSITION**  
**March 31, 2016**

	ASSETS	<u>2016</u>	<u>2015</u>
CURRENT			
Cash (Note 3)		\$ <u>2,076,462</u>	\$ <u>1,905,004</u>
<b>TOTAL ASSETS</b>		<b>\$ <u>2,076,462</u></b>	<b>\$ <u>1,905,004</u></b>
	LIABILITIES		
CURRENT			
	NET ASSETS		
Restricted net assets		2,076,462	1,905,004
Unrestricted net assets		<u>-</u>	<u>-</u>
<b>TOTAL NET ASSETS</b>		<b><u>2,076,462</u></b>	<b><u>1,905,004</u></b>
<b>TOTAL LIABILITIES &amp; NET ASSETS</b>		<b>\$ <u>2,076,462</u></b>	<b>\$ <u>1,905,004</u></b>

Approved by the Directors:

  
 \_\_\_\_\_, Director

  
 \_\_\_\_\_, Director

**FARM IMPLEMENT COMPENSATION FUND**  
**CASH FLOW STATEMENT**  
**For the year ended March 31, 2016**

	<u>2016</u>	<u>2015</u>
OPERATING ACTIVITIES		
Excess of revenue over expenses	\$ <u>171,458</u>	\$ <u>143,590</u>
INCREASE IN CASH AND CASH EQUIVALENTS	171,458	143,590
CASH AND CASH EQUIVALENTS, beginning of year	<u>1,905,004</u>	<u>1,761,414</u>
CASH AND CASH EQUIVALENTS, end of year	<u>\$ 2,076,462</u>	<u>\$ 1,905,004</u>

**FARM IMPLEMENT COMPENSATION FUND**  
**NOTES TO FINANCIAL STATEMENTS**  
**March 31, 2016**

**1. PURPOSE OF THE NOT-FOR-PROFIT ORGANIZATION**

The Farm Implement Compensation Fund (the Fund) consists of money received by the Farm Implement Board (the Board) from levies, assessments and penalties in accordance with the Farm Implement Act. This fund is maintained by the Board and its financial results are reported annually through an audit process. Every year the Board sets the levy that Alberta dealers and distributors pay to the Fund. In addition to the levy, the Board may order an additional assessment on applicants who did not hold a licence in the previous year and on licencees with respect to whom the Board awarded compensation from the Fund. The Board and the Fund are both exempt from income tax.

**2. ACCOUNTING POLICIES**

These financial statements were prepared in accordance with Canadian accounting standards for not-for-profit organizations (ASNPO) and include the following significant accounting policies:

**Revenue recognition**

- a) The revenues of the Fund consists of levies, assessments, penalties, and interest. Levies, assessments, and penalties are recorded as income when they are received. Levies received that are for the following calendar year are not deferred.

Interest is recorded as revenue when it is received.

**Management's use of estimates**

- b) When preparing financial statements according to ASNPO, the Fund makes estimates and assumptions relating to:
- Reported amounts of revenue and expenses;
  - Reported amounts of assets and liabilities; and
  - Disclosure of contingent assets and liabilities

Management's assumptions are based on a number of factors, including historical experience, current events and actions that the Board may undertake in the future, and other assumptions that we believe are reasonable under the circumstances. Actual results could differ from those estimates under different conditions and assumptions.

**Cash and cash equivalents**

- c) Cash is comprised of amounts on deposit at financial institutions.





**FARM IMPLEMENT COMPENSATION FUND**  
**NOTES TO FINANCIAL STATEMENTS**  
**March 31, 2016**

**3. FINANCIAL INSTRUMENTS**

The organization is exposed to various risks through its financial instruments. The following describes the exposures to those risks, how they arise, any changes in risk exposures from the previous period, and any concentrations of risk.

**Credit risk:**

Credit risks arise from one sources: cash, which is deposited with reputable, major financial institutions to limit the credit risk exposure.

## Connect With Us



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Farmers' Advocate of Alberta

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