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## Watchdog takes aim at 'green' tax; Consumers Council challenges plan to put charge on hydro bills to pay for \$53.7 million energy fund

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Page: A11

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Illustrations: Lawyer Robert Warren says the levy is flawed.

A consumers group has mounted a legal challenge against a \$53.7 million green energy fund that will be raised through a charge on hydro bills.

The Consumers Council of Canada has filed a motion with the Ontario Energy Board challenging the levy, saying it amounts to an illegal tax.

The levy, imposed by the provincial budget, will cost a typical consumer about \$4 a year.

Consumers council lawyer **Robert Warren** said Ontario will likely impose similar levies on customers of the province's two big gas utilities, raising an additional \$100 million or more in total.

The money in the electricity fund is to be used for such programs as home energy audits, or helping companies use solar power.

But Warren says the levy is flawed, because it's imposed on local hydro utilities, who in turn raise it from their customers.

"It meets the classic definition of an indirect tax," said Warren in an interview.

Since the Constitution doesn't allow provinces to levy indirect taxes, that makes it unconstitutional, he said.

A province can levy what's called a "regulatory charge" for a specific regulatory scheme, but the levy doesn't meet that test, either, he said.

"This is general revenue for general use by the ministry of energy and infrastructure," he added.

The C.D. Howe Institute has also argued that the levy is unconstitutional.

Energy Minister Brad Duguid has previously rejected that analysis, saying the Green Energy Act gives the province authority to create conservation programs and recover the costs through hydro rates.

He says that conservation programs funded by the new fee give consumers tools to lower their overall energy bill.

Warren said the levy is bad policy as well as bad law.

"These burdens are all really in essence taxes, and they're regressive taxes," he said.

"They're levied on consumers on the basis of the volume of electricity they use, and not on the basis of

their income."

The conservation levy isn't happening in isolation, he noted. Consumers are facing higher energy bills because of the installation of smart meters and imposition of the harmonized sales tax (HST).

The consumers council wants the province "to stand up and list the cumulative burdens and justify them," Warren said.

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