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**Police cellphone searches threaten privacy: Editorial**

Prime Minister Stephen Harper’s government should take a hard look at requiring police to obtain warrants before making even cursory searches of cellphones or similar electronic devices.

More Canadians than ever are using cellphones as minicomputers that contain a treasure trove of personal information.

Who hasn’t stored phone numbers, addresses and other details about family, friends and acquaintances? Cells, smart phones and similar devices can contain bank records, workplace data, security codes. They hold private correspondence, medical records, diaries, memos and notes. Photos and videos. Facebook and Twitter accounts. And Internet browsing histories. The list is virtually endless.

They are a yawning portal into our private lives. And in [a ruling this past week,](http://www.thestar.com/news/crime/2013/02/20/privacy_rights_police_can_search_unprotected_cellphone_without_warrant_appeal_court_rules.html) Justice Robert Armstrong and two other judges of the Court of Appeal for Ontario rightly acknowledged “the highly personal and sensitive nature” of cellphone contents and the “high expectation of privacy” that people have of such devices.

Yet even so, the court upheld the right of police who are making an arrest to also make at least a cursory search of the suspect’s cellphone contents without a judge’s warrant *unless* the phone is password-protected.

While the Supreme Court has yet to be heard on the issue, this is a troubling ruling. Canadian law is clearly lagging behind public expectations when it comes to privacy rights. Cellphones aren’t pockets, purses or backpacks, which the police have long been allowed to search. Potentially, at least, they hold vastly more information. This ruling also raises the question of why the police should be free to examine unprotected phones but not protected ones. It may be the law, but if so the law needs fixing.

Prime Minister Stephen Harper’s government should take a hard look at this issue, with an eye to passing legislation requiring police to obtain warrants before making even cursory searches of cellphones or similar electronic devices in all but the most exceptional cases. [That’s the position taken by the Canadian Civil Liberties Association](http://ccla.org/2012/09/06/want-to-search-my-cell-phone-get-a-warrant/), and it is the right one.

The case at hand involved Kevin Fearon, who was convicted of armed robbery in a 2009 jewelry heist. During a pat-down search police found a cellphone, manipulated the key pad to open it up and found photos of a gun and cash, plus an incriminating text message referring to jewelry. None of this was in plain view. Still, [the appeal court ruled](http://www.ontariocourts.ca/decisions/2013/2013ONCA0106.htm) that Fearon’s rights against unreasonable search were not breached because the police have a common law right to conduct a cursory search when they arrest someone.

By that logic the police who arrested more than 1,100 people in Toronto during the G20 Summit in 2010 would have been justified in rummaging through any number of phones, even though some 800 were freed without being charged. As the CCLA pointed out to the court, arrests that don’t lead to charges “are largely hidden from judicial review.” The potential for abuse should be obvious.

“The state should not be entitled to search a person’s entire virtual existence simply because they happen to have been arrested on suspicion of a particular offence,” the civil liberties association argued in this case. Electronic devices can be seen as “virtual homes” that — like our private residences — ought not to be searched absent a warrant.

No one is suggesting that the police shouldn’t be allowed to *seize* cellphones and similar devices when they arrest a suspect. The phones may contain evidence of wrongdoing. But that should be for a judge to decide. As a rule the police should have to make their case for a search and get a warrant before cracking open private lives.