

Should We Ban People from Our Boards?

Many organizations have a policy that prevents certain types of people from sitting on the board. Initially this may seem unethical. Certainly some of the dangers are evident: will people be denied the chance due to skin colour? sexual orientation? What if the Chair doesn't like people from that family, or doesn't want any board member who seeks to change the organization? Indeed the ability to ban people may be very useful to an incompetent or over-controlling board. It could prevent other skilled people from joining and possibly shifting the power structure, or exposing the incompetence of current members.

But there are equal dangers in having no restrictions: will a group of people opposed to the organization and its mission run a slate of candidates and, if successful, close down the organization, or subvert it? Good bylaws, bylaw compliance and good election processes can save an organization for its original purpose.

Many organizations have restrictions on memberships, and the board is elected or appointed from the members. One possible tactic is to ask all members to sign a pledge that they adhere to the ethics code of the group, so both your membership and your voters at AGMs are aligned with the organization's values. However, in large or geographically dispersed organizations, it can be difficult to get a signature from every member every year. Further, the form used may not be very detailed.

I strongly recommend that people be asked to apply for a Board appointment, and that the application include a confirmation that they support in principle the Vision, Mission and Values Statements of the organization. You could also ask them to sign a pledge that they will follow Board policies including Conflict of Interest. It is my understanding (and this is not legal advice) that you can word the bylaws in such a way that even external appointments to your board do not become effective until such a form is signed.

Even so, someone may be able to sign, yet be deemed unacceptable by some in the organization for reasons other than skills or competence. Suppose someone fully supports the mission of a faith-based organization working in international development, yet does not support the faith itself, or the basic tenets of that faith? Is that acceptable? I believe the organization would need a significant dialogue on the matter, perhaps on a case by case basis. An external person like me cannot give a "right" answer. Different NGOs might reach different, equally valid, conclusions.

The key here is to have policies with clear explanations for each restriction. The policies, of necessity, must be unique to each organization, and the restrictions reviewed and updated as necessary. Such a document can be made readily available to any potential board candidate.

Human rights bodies sometimes give advance approval for an organization to discriminate in some manner particular to their work. For example, some organizations serving women victims of violence feel that the women should not have to deal with male counsellors, and receive approval to hire only women. But the organization can choose to selectively apply or not apply that approval depending on the nature of client contact; it may not be needed for board members.

What about restrictions based on other affiliations? If you join one national political party, you usually cannot join others. If you are not in good standing with your professional college, your professional association likely doesn't want you as a member either.

Statistics on volunteering show that people who belong to one nonprofit are quite likely to belong to several, often unrelated. I have heard of nonprofits that have no political affiliation nevertheless wanting to keep out people who belong to political parties that they feel are opposed to the work they do.

Feelings would be even stronger if the individual belonged to some group deemed abhorrent and despicable by most of the general public, and reviled by the media. But could your board ever agree on a list of such organizations? Could such a list be useful in a time when Internet groups are formed and dissolved daily? Could you possibly find out which candidates belong to which groups when membership lists are often secret or may use aliases rather than real names? Even when membership lists are public some people will have asked to be left off and kept anonymous, and may have the legal right to do that under privacy laws.

Some people are automatically banned from boards, such as undischarged bankrupts. And it is increasingly common for charities put all their staff and volunteers through police checks. A conviction is not necessarily a reason to refuse someone a board position: a minor bar brawl decades earlier is not the same as a conviction for fraud. What about an organization that assists alcoholics - should they elect a board member with a conviction for drunk driving? What if saying no prevented almost everyone with a history of alcohol abuse from serving? Would it make a difference if the conviction was recent?

Organizations have a right to collect information from a candidate, and to collect public information about a candidate, but critical data could easily be missed. Candid discussions with the candidate are likely the best way to learn their views on the issues. And only a determined trouble-maker would sign below a Values Statement they disagree with.

In many organizations, it is difficult to get on a board without a history of past volunteering. If they have given their time, they likely believe strongly in the cause. And their volunteer record is an excellent way of learning if their attendance is good and their commitments kept.

Reference checks may help identify trouble-makers, but be careful since people who voice disagreement within a board may be raising valid points. Your board will not benefit from someone who is silent except for "me too" voting; directors need to ask challenging questions. However, I would be wary of someone who has sat on several boards but cannot provide any reference from past board service.

All of this due diligence, likely supervised by the Governance or Board Development Committee (or in older terminology the Nominating Committee) is for naught if anyone can get elected. Many bylaws are very loose, allowing nonmembers to run as long as they become members after the election, and allowing nominations from the floor. And some, very unwisely in my opinion, have one-year terms, so the whole Board is up for election every year. If you combine such

processes with unlimited use of proxies, you put the organization at risk of being taken over by one person with more proxies than the number of people in attendance at the AGM.

Bylaw clauses such as membership in advance (if membership is applicable), limitations on number of proxies, staggered two or three years terms on the Board, and requirements for nominations in advance can provide some risk management without harming democracy.

Voters also need to have information about the candidates. Ask candidates for bios and for written answers to questions such as why they want to serve on this board, and circulate that information in advance to voters.

Many boards recommend a list or slate of candidates that they feel they have vetted properly. Voters can then more easily decide. If they believe the board is doing a good job, and trust them to make wise recommendations, they will likely support the board's recommendations. If not, they can easily see which outsiders are running for the board.

If your bylaws provided for a self-perpetuating board, the directors still need to carry out full due diligence on candidates, but with much less risk of unexpected results at an AGM. However, this approach can, and often does, also prevent fresh ideas and diversity. Directors need to make an effort to recruit beyond their personal networks.

I believe a good dialogue on board recruitment policies, supported by case by case evaluations, is far superior to blanket bans. However, you must have clear Vision, Mission and Values Statements to evaluate each case against, or you will just be looking at personalities and personal biases. And that isn't good enough.

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