



**TSAWOUT FIRST NATION**

# **Custom Election Law Project**

**Community Meeting # 1**

**Topics:** Project Introduction, Comparisons of the Indian Act and First Nations Election Act

**Date:** May 5, 2022

**Time:** 6:00pm – 8:00pm

**Brought to you by:** XXXXX Advisory Committee and Kina Law Corporation



Kina Law provides legal services across the unceded territories of diverse Indigenous peoples in what is known geographically as British Columbia.

Our offices are located within the territories of the ɫəkʷəŋən, Xwsepsum and W̱SÁNEĆ peoples.

As visitors from other Indigenous territories, we are committed to:

1. Ensuring our lawyers have the skills and experience required to provide Indigenous peoples' with culturally safe legal services that meet their unique needs and goals.
2. Being conscious of how our actions may impact upon Indigenous peoples' rights under the *United Nations Declaration on the Rights of Indigenous Peoples*, and on the ecological, cultural, and spiritual relationships that Indigenous peoples have with their traditional lands.

# Agenda for Today

Background – The *Indian Act*, and Chief and Council Elections

4 Types of First Nations Electoral Systems in Canada

Conversion to a Custom Election Law

STÁUTW Path to a Custom Election Law

Roles and Responsibilities in the STÁUTW Path to a Custom Election Law

Comparison of the *Indian Act* and *First Nation Election Act*

*United Nations Declaration on the Rights of Indigenous Peoples* and Indigenous Laws



# Background – The *Indian Act*, and Chief and Council Elections

**1867:** Canada was created by the *Constitution Act*, 1867

S.91(24) gave Parliament the power to enact laws in relation to “Indians and lands reserved for Indians”

**1868:** Parliament created a law that set out whether a person is or is not an “Indian”. This law recognized chiefs as authorized decision-makers

**1869:** Parliament created a law that authorized the Governor in Council to order that chiefs be elected into their roles

**1876:** Parliament created the first *Indian Act*. This document was the first to use the term “band” to describe groupings of “Indians”

# Background – The *Indian Act*, and Chief and Council Elections

Life chiefs, councillors and headmen could continue to hold rank until death, resignation, or removal by GIC for dishonesty, intemperance, immorality or incompetency



**1906:** *Indian Act* amended granting the Governor in Council power to introduce an elective system for selection of Chief, Councillors and headmen if “*deemed advisable for the good government of the band*”

**1985:** Fast forward through a few more versions of the *Indian Act* to today

S.74 gives the Governor in Council the same authority to order a Chief and Council be elected in accordance with the *Indian Act*

**1997:** On March 4, 1997 the Governor in Council passed an order under s.74 requiring 277 First Nations in Canada to hold Chief and Council elections under the *Indian Act*

This included 98 BC First Nations

Tsawout is on the list!

**1997 - Today:** The Governor in Council has repealed the s.74 order as it applies to 54 First Nations in BC and for many First Nations in other provinces

44 First Nations in BC remain under the *Indian Act* for their Chief and Council elections

Tsawout is one of those First Nations



### *Indian Act & Regulations*

- Approx. 200 First Nations
- Required as per s.74 Orders

### *First Nations Election Act & Regulations*

- 79 Participating First Nations
- Opt-in by BCR, or forced by Order of Governor in Council

### Custom Election Laws

(aka. Codes, Regulations, Rules)

- Indigenous Services Canada - Conversion to Community Election System
- Ratification: 50% participation + 50% (+1) vote yes

### Self-Government Agreement / Treaty Final Agreement

- Generally referred to in a FN's Constitution but may be stand-alone law as well

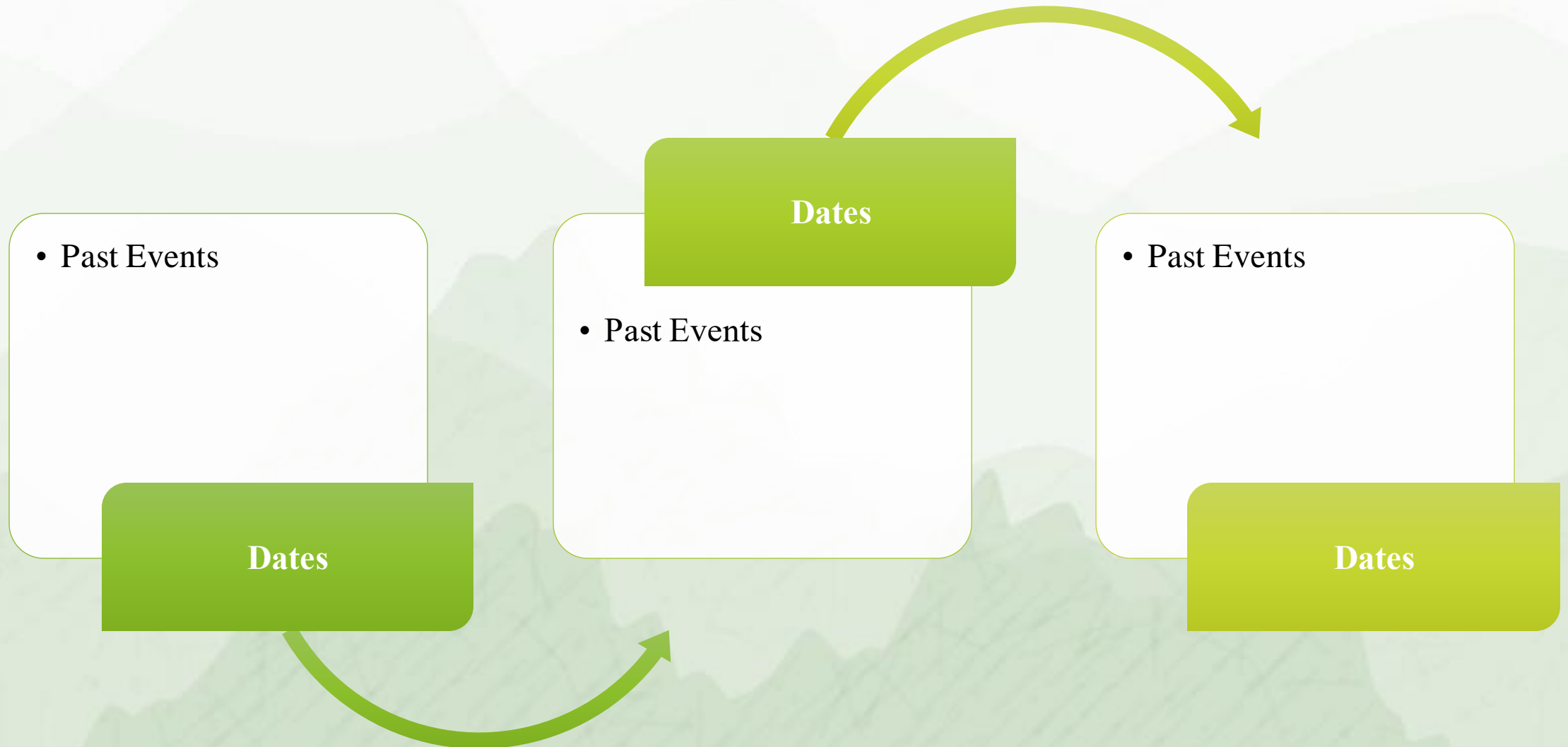
# 4 types of First Nation Electoral Systems in Canada

# ISC Policy Re: Conversion to a Custom Election Law

**Tsawout must create a system that its members support, and that system must:**

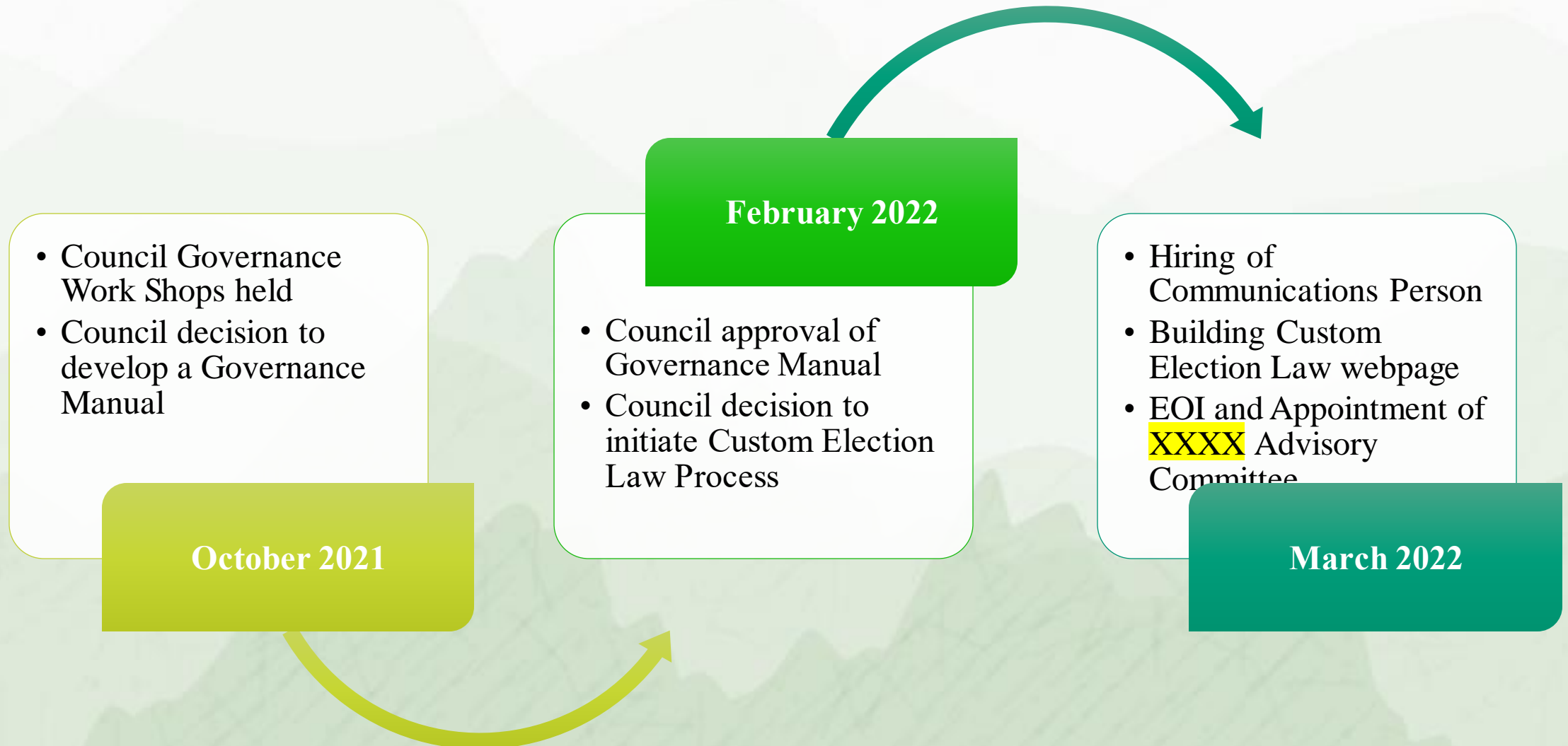
- be in clear, written format
- address for how election appeals will be dealt with, without involvement of ISC
- address how amendments will be made, and process for amendments must involve membership
- comply with the principles of natural justice
- be consistent with the Charter of Rights and Freedoms
- be reviewed by ISC and be satisfactory to ISC
- be approved by a majority of Tsawout electors, or in another manner agreed to by Tsawout and ISC
- All Tsawout members must be provided reasonable notice of the vote, and adequate information about the proposed Custom Election Law
- Documentation regarding the vote, and a final copy of the Custom Election Law must be provided to ISC

# STAUTW\_Path to a Custom Election Law

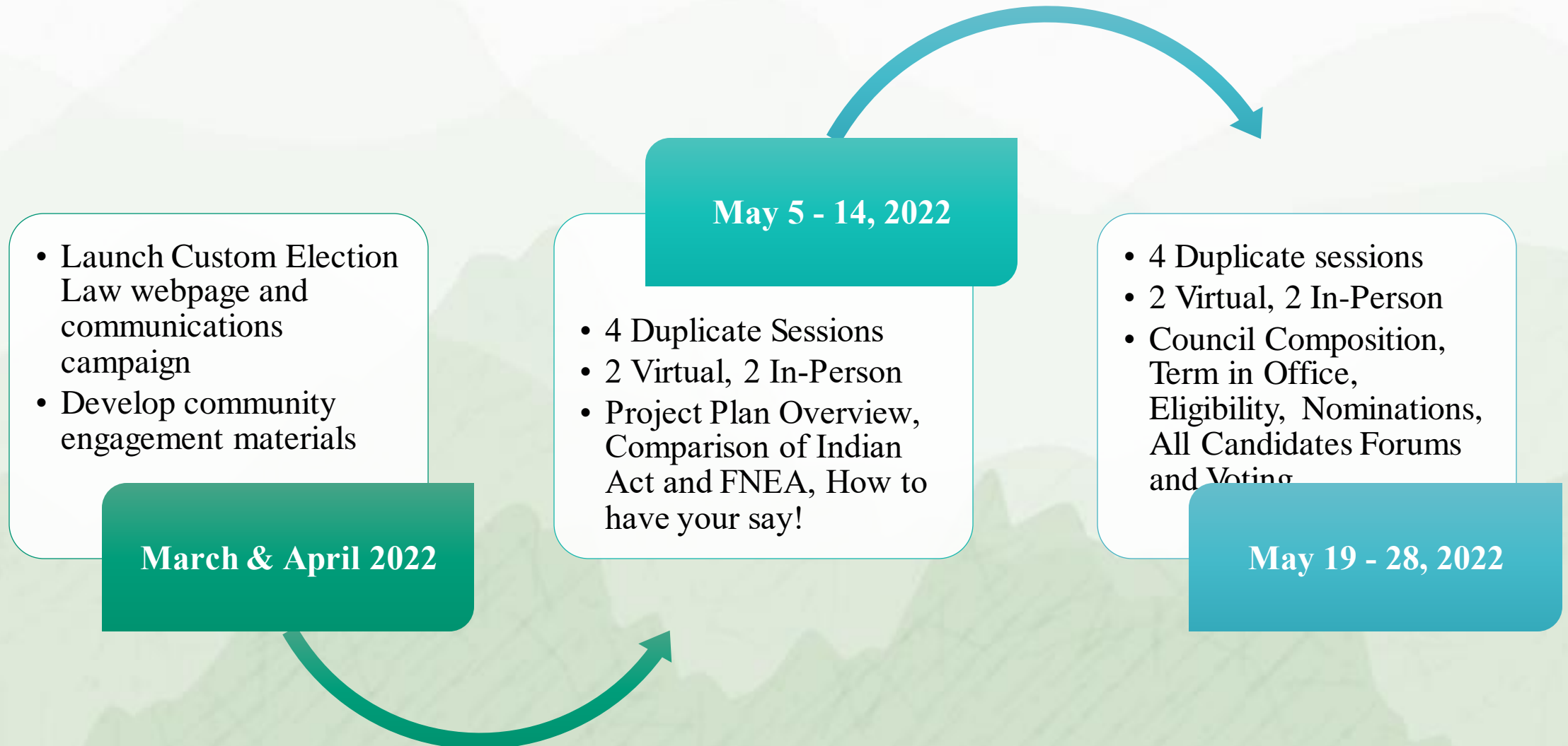




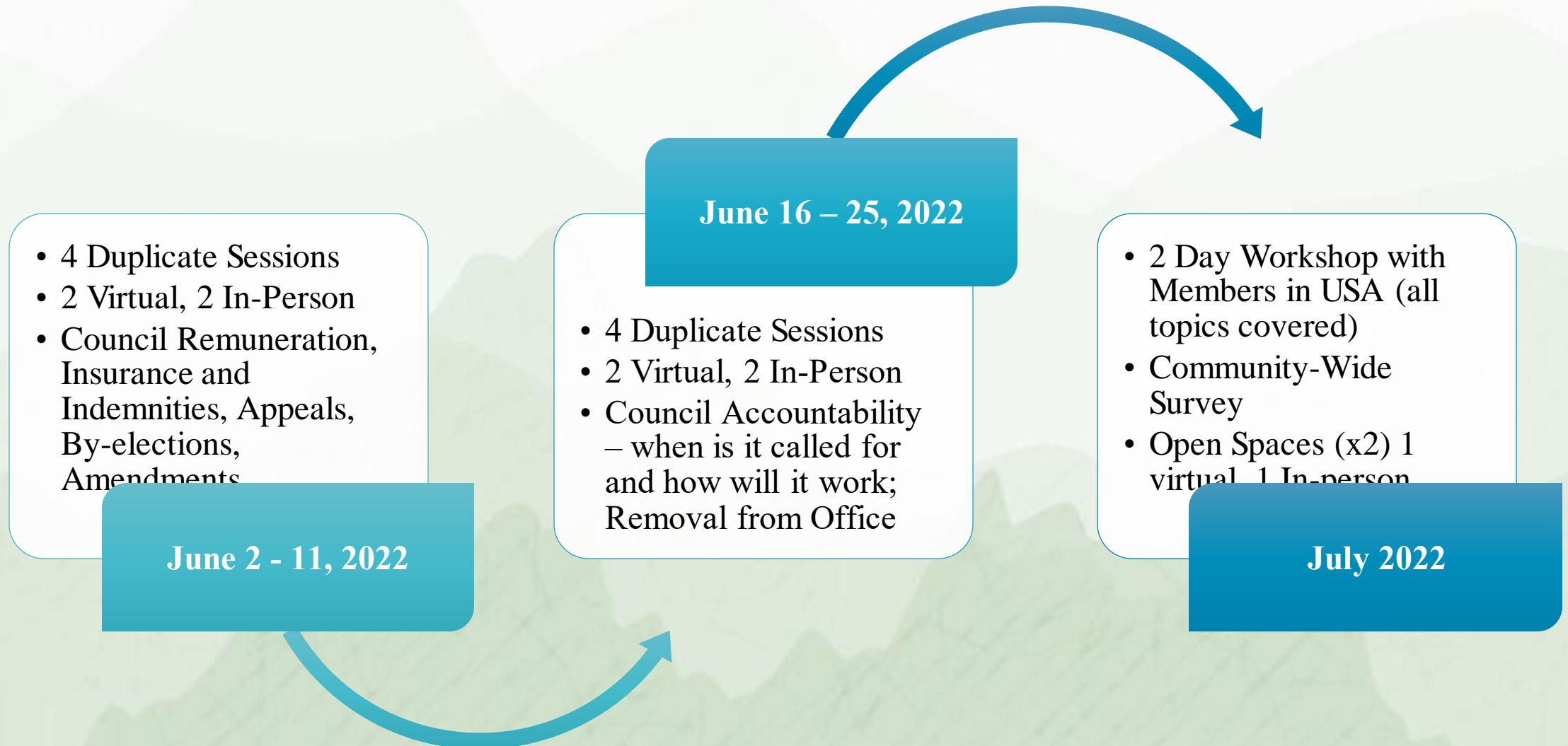
# STÁUTW\_Path to a Custom Election Law



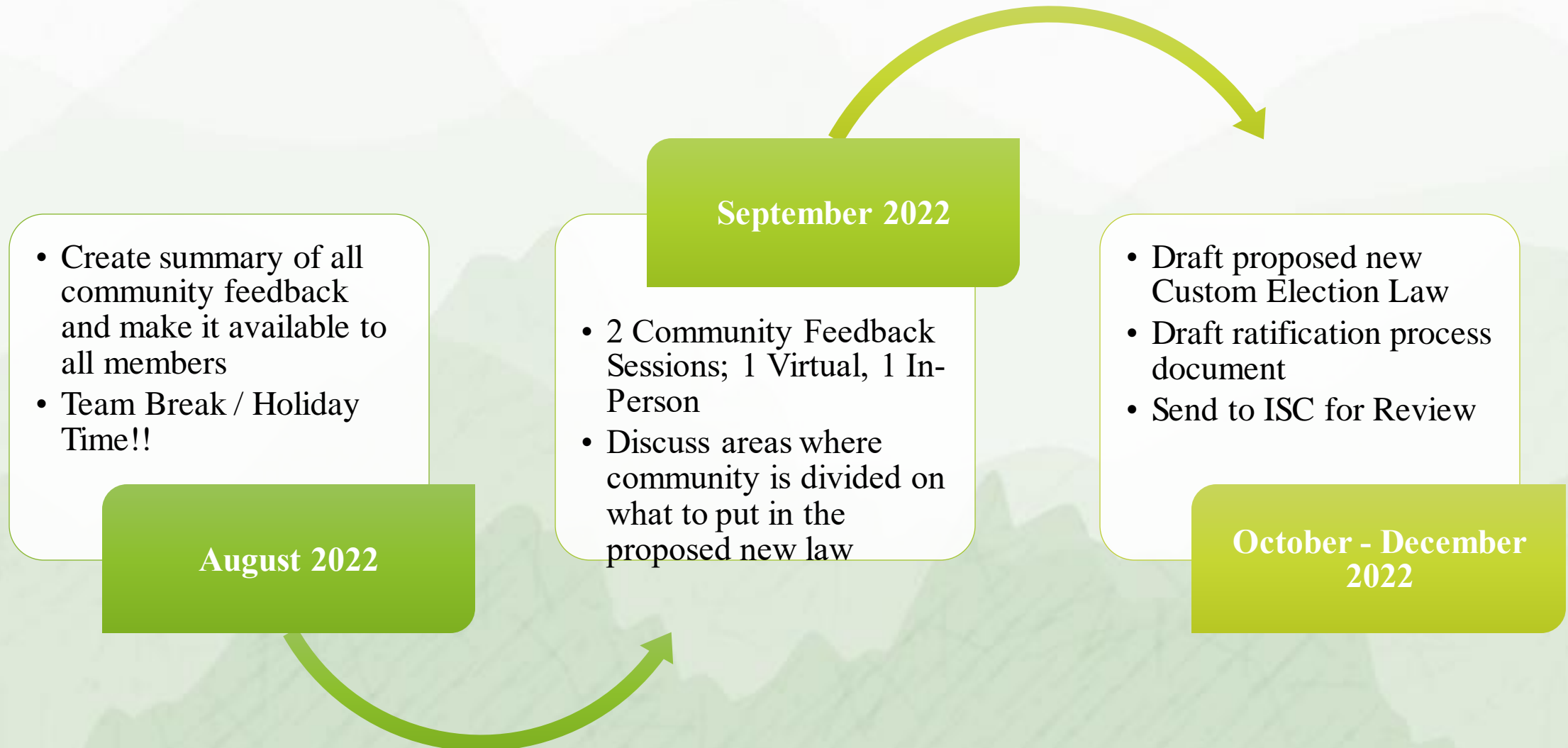
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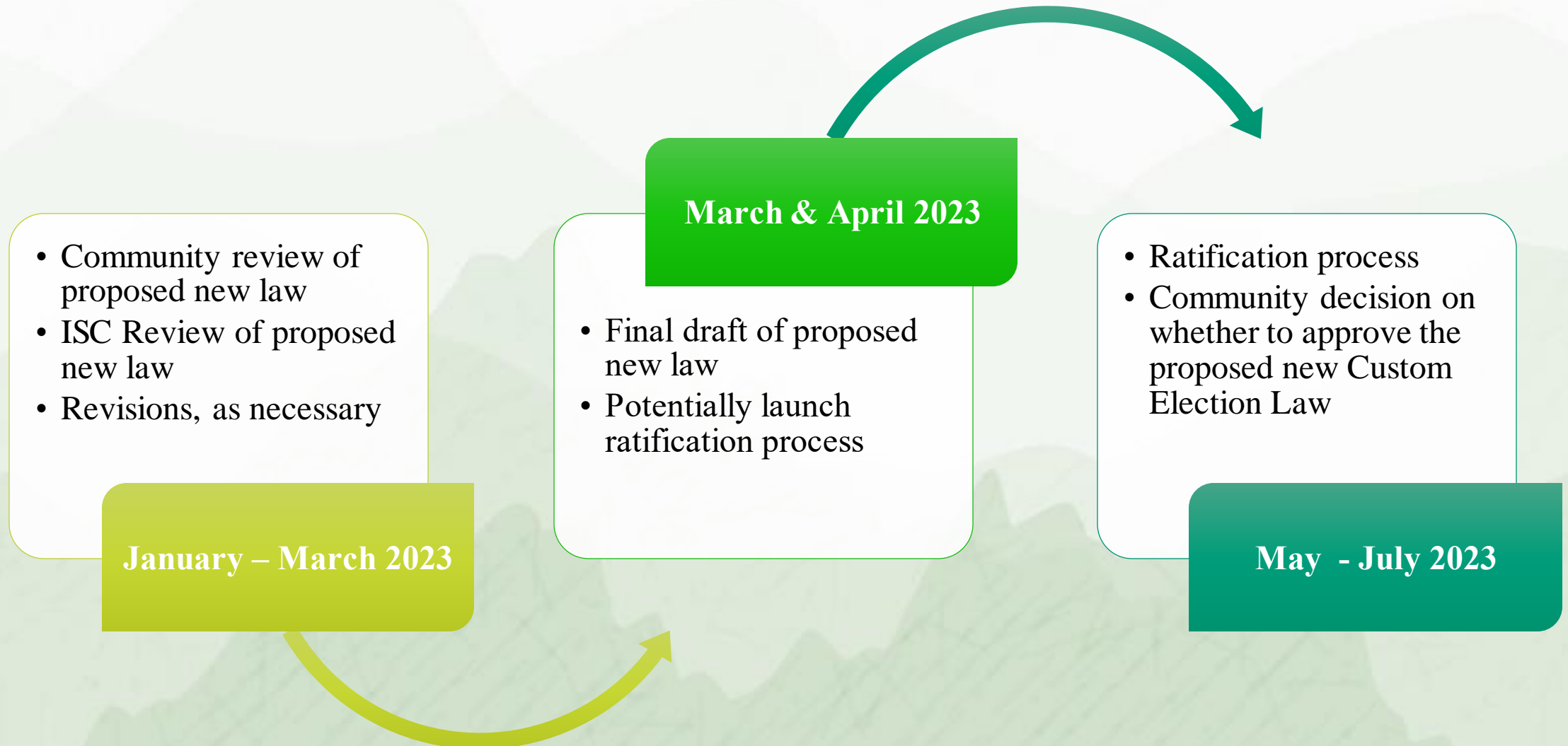
# STAUTW\_Path to a Custom Election Law



# STAUTW\_Path to a Custom Election Law



# STÁUTW\_Path to a Custom Election Law



# Roles and Responsibilities in the STÁUTW\_Path to a Custom Election Law

## XXXX Advisory Committee

Assist with outreach to STÁUTW\_Members

Provide advice to Legal Counsel regarding information to include on the webpage and in communications that go out to members, community engagement, and how to ensure a culturally meaningful approach is taken to developing the new Custom Election Law

## Members

- Work with Legal Counsel to develop a new proposed Custom Election Law
- Decide whether to approve the new proposed Custom Election Law

## Legal Counsel

- Listen to Members about what they want in the proposed new Custom Election Law
- Provide Members advice about how to ensure it complies with the Charter of Rights and Freedoms, and Principles of Natural Justice
- Draft the new proposed Custom Election Law

## Tsawout Administration

- Administrative Support and funding of project

# Council Composition

Indian Act & Regulations	First Nations Election Act & Regulations	Custom Election Law
1 Chief	1 Chief	Determined by members
1 Councillor per 100 members	1 Councillor per 100 members	May have more than 1 Chief, Chief Alternate, Youth or Elder Representatives
No less than 2 or more than 12 Councillors	No less than 2 or more than 12 Councillors	May have rules allowing for Council portfolios, better family representation, or on/off reserve representation
No more than 1 Chief	Council BCR = reduce the # of councilors but not to less than 2	

# Council Terms in Office

Indian Act & Regulations	First Nations Election Act & Regulations	Custom Election Law
2 years	4 years	Determined by Members
No Limit on # of Terms in Office	No Limit on # of Terms in Office	Option of staggered terms
	Term ends in certain circumstances	Option to change term limit
		Option to provide for a maximum # of Terms in Office



# Eligibility Criteria to be Candidate

Indian Act & Regulations	First Nations Election Act & Regulations	Custom Election Law
<p>Only candidates nominated for Councillor positions must be a member of the First Nation</p>	<p>Candidates nominated for all positions must be an elector of the First Nation</p>	<p>Determined by members so long as they comply with Charter of Rights and Freedoms</p>
<p>Candidates must be at least 18 years of age on the day of the nomination meeting</p>	<p>Candidates must be at least 18 years of age on the day of the nomination meeting</p>	

# Nomination Procedures

Indian Act & Regulations	First Nations Election Act & Regulations	Custom Election Law
<p>Candidates are nominated by members in writing before the nomination meeting, or in person at the nomination meeting</p>	<p>Same as Indian Act, but...</p> <p>Candidates can only run for either Chief OR Councillor</p> <p>Cannot nominate self</p> <p>Cannot nominate more persons than number of positions avail</p> <p>FN may impose up to a \$250 Candidate fee, refunded if <math>\leq 5\%</math> votes</p>	<p>Determined by members</p> <p>Self nomination?</p> <p># Nominations allowed?</p> <p>Nomination Fees?</p> <p>Standardized Form used?</p> <p>Running for both Chief and Councillor positions?</p>

# Procedures for Accepting Candidacy

<b>Indian Act &amp; Regulations</b>	<b>First Nations Election Act &amp; Regulations</b>	<b>Custom Election Law</b>
<p>Persons nominated automatically become candidates and their names are included on the ballot. They may withdraw in writing if they do not wish to accept the nomination</p>	<p>Persons nominated must submit a written declaration and acceptance of the nomination and if applicable, the candidacy fee imposed by Council</p>	<p>Deposit Required?  Declaration that person meets all eligibility criteria?</p>

# Types of Voting Available

Indian Act & Regulations	First Nations Election Act & Regulations	Custom Election Law
Mail-In ballots to all off-reserve members and by request on-reserve	Mail-In ballots sent out by request of individual electors	Mail-In to everyone? OR only by request?
In-Person at polls between 9am-9pm	In-Person at polls between 9am-9pm	In-Person – polling hours determined by First Nation
No option for Electronic Voting	No option for Electronic Voting	Electronic Voting

# Election Appeals Processes

Indian Act & Regulations	First Nations Election Act & Regulations	Custom Election Law
45 Days to file appeal with Assistant Deputy Minister of INAC	30 Days to file an application in either Federal Court or BC Supreme Court	Can use Federal Court, or Supreme Court
Minister of INAC does investigation	Court Decides Outcome	Can have own Adjudication Process paid for by First Nation
Governor in Council Decides Outcome		Can set own timeframe for appeals to be filed

# Removal / Accountability of Council Members

Indian Act & Regulations	First Nations Election Act & Regulations	Custom Election Law
Position is vacant if a person dies, resigns or is convicted of an indictable offence.	Position is vacant if person dies, resigns or is convicted of an offence under FNEA or an indictable offence <u>and sentenced to more than 30 days</u>	Can set out own process to Remove/Hold Council members Accountable
Minister can remove if person misses 3 Council meetings without Council authorization	<u>in jail</u> By petition – not regulated process	Council Accountability Hearings
	No Minister removal for missing Council meetings	Accountability Committee



# United Nations Declaration on the Rights of Indigenous Peoples

## Article 3: Right to self-determination

- to freely determine their political status and freely pursue their economic, social and cultural development

## Article 4: Right to self-determination includes...

- the right to autonomy or self-government in matters relating to internal and local affairs

## Article 5: Right to maintain and strengthen own distinct political, legal, economic, social and cultural institutions

- and to participate fully in the political, economic, social and cultural life of the State



# United Nations Declaration on the Rights of Indigenous Peoples

Article 20: Right to maintain and develop own political, economic and social systems or institutions

- to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities

Article 34: Right to promote, develop and maintain own institutional structures and own distinctive customs, traditions, procedures, practices





# Canada and UNDRIP

- On June 21, 2021, Parliament passed the *United Nations Declaration on the Rights of Indigenous Peoples Act*
- Provides Canada a road map to work in consultation and cooperation with Indigenous Peoples to develop an action plan for implementation
- Requires Canada to fulfil 3 inter-related legal obligations:
  - Take all measure necessary to ensure consistency of federal laws with the Declaration
  - Develop an action plan by June 2023 to achieve the objectives of the Declaration
  - Develop annual reports on progress and submitting them to Parliament
- Call for Proposals to Indigenous peoples, governments and organizations for projects engaging Indigenous peoples in dialogues about implementation, how to ensure consistency of federal laws with UNDRIP, and how Canada should report back to Indigenous peoples on their work

# BC and UNDRIP

- In November of 2019, the Legislature passed the *Declaration on the Rights of Indigenous Peoples Act*
- Sets out a process to align BC's laws with UNDRIP
- Mandates the BC government to bring provincial laws into harmony with UNDRIP
- Requires the BC government to develop an action plan
- Authorizes the Province to enter agreements with Indigenous Governing Bodies for shared decision-making



# Indigenous Laws

**Indigenous Law Introduction Video  
(7min):**

<https://youtu.be/7uNgg7raxk4>

UVic Indigenous Law Research Unit,  
2015



# Resources and Sources of Indigenous Laws



## Resources

- Elders, Oral Histories, Personal Memories and Experiences
- SENĆOTEN language
- Songs and Stories
- Historical and Anthropological Research



## Sources

- Á,LENENEÇ ŁTE (Our Homeland)
- ĆELANEN
- XÁLS (the Creator), the Natural World, and our ŁIŁEÇ (Interconnectedness)
- Traditions, Ceremonies and Spirituality
- Past declarations made by our people