



# **TSAWOUT FIRST NATION**

## **Custom Election Law Project**

**Introductory Community Meeting**

**Topics: Introduction to the Custom Election Law Project**

**Date: May 3, 2022**

**Time: 6 pm – 8 pm**

# Agenda for Today

Opening Prayer

A few words from Chief and Council

Introduction to the Custom Election Law Project Team

- Who is involved
- What is each person's roles and responsibilities?

What is a Custom Election Law?

- Haven't we done this before? What happened?
- What types of things can we include in a Custom Election Law?
- What are the restrictions on things we can include in a Custom Election Law?
- How do we develop and approve a Custom Election Law?
- What are the benefits of a Custom Election Law?

How can I get involved?

Where do I find more information?





# A few words from Chief and Council



# Custom Election Law Project Team



## STAUTW Members

- Instruct Legal Counsel on what to include in a Custom Election Law
- 18+ yrs. = Vote on whether to approve the Custom Election Law



## Advisory Committee

- 4 to 6 STAUTW Members
- At least one youth (aged 18 – 30), one Elder, and on and off-reserve representatives
- Broad cross-section of STAUTW families



## Chief & Council

- Advocate for funding for the project
- Ensure financial support is available for the project
- Approve creation of an Election Law Advisory Committee



## Tsawout Administration

- Christine Bird, Band Manager
- Becky Wilson, Governance Admin. Support
- Dave Watson, Communications for the People



## Kina Law Corporation

- Sonya Pighin, Lawyer
- Adrienne Macmillan, Lawyer



# Role of the STÁUTW Members



- Be a part of the Custom Election Law Project Team!
- Work directly with other Tsawout Members, Legal Counsel and the Tsawout Administration to lead the community law development process



**Learn from Legal Counsel about how other governments (Indigenous, Federal, Provincial, Municipal)**

- Address eligibility to be elected in leadership roles
- Manage elections and election appeals
- Are restricted by law in their actions
- Hold elected officials accountable



**Instruct Legal Counsel and Make Decisions**

- Instruct legal counsel on what to put in the Custom Election Law
- Decide on whether to approve the Custom Election Law

# Role of the Advisory Committee



- informing Members of upcoming and past community engagements, and how to get involved
- documenting Members questions, comments, and concerns

**Provide advice to STAUTW and Legal Counsel regarding information to include:**

- in communications that go out to members, including in newsletters, social media, mail outs, etc.
- in community engagement materials



- working with members. (Elders, youth, on- and off-reserve) to develop the new Custom Election Law
- drafting the new Custom Election Law



# Advisory Committee Expression of Interest



## Expression of Interest Process

- First round of appointments will be made April
- Rolling applications accepted throughout the life of the project
- Appointments are made by the Band Manager based on the selection criteria
- May apply by:
  - Online form on the Tsawout website
  - Email Becky Wilson at [bwilson@tsawout.ca](mailto:bwilson@tsawout.ca)

# Role of Chief and Council



- Approve funding applications to support the Custom Election Law Project
- Allocate available STAUTW funds towards supporting the Custom Election Law Project

**Give Power to  
STAUTW Members  
Regarding  
Development of the  
Law**

- Answering the same survey questions as all Members will answer in the engagement process
- Voting the proposed new Law (1 vote each in a Community referendum)
- Otherwise: hands-off approach to law the development
- Chief and Council want Members to be responsible for developing this Law



If a new Law is approved by membership, Chief and Council will be:

- elected in accordance with it
- bound by it
- held responsible for their actions in accordance with it



# Role of Tsawout Administration



- Contract with Communications for the People representative
- Contract with Legal Counsel



**Administrative  
Support (Band  
Manager and staff)**

- Planning for Community Meetings (ex. booking space, arranging food, etc.)
- Supporting Advisory Committee meetings to be held (ex. printing agendas, providing space for meetings, arranging compensation to be paid)



**Communications  
for the People  
Representative**

- Creates and delivers communications to Members
- Manages all social media, billboard, newsletter, and mail outs
- Key contact for STAUTW Members who have questions about or want to provide suggestions and concerns regarding the Law

# Role of Legal Counsel



**Facilitate Advisory Committee Mtgs**

- Assist the Advisory Committee in setting their agenda
- Presenting proposed engagement materials to the Advisory Committee
- Receiving Recommendations from the Advisory Committee

**Take Instructions from the Advisory Committee and STÁUTW Members**

- Advisory Committee instructs Legal Counsel on engagement materials
- STÁUTW Members instruct Legal Counsel on what will go into a draft Law



**Draft and Present Law to STÁUTW Members**

- Draft the Custom Election Law
- Prepare materials summarizing the draft Law for review at Community Meetings
- Review of the draft Law with Members
- Revisions and Final Draft



# 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

# 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 Minister the same authority to order a Chief and Council be elected in accordance with the *Indian Act*

**1997:** On March 4, 1997 the Minister 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



**TSAWOUT FIRST NATION**

### *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

# What is in a Custom Election Law

- A complete set of rules and processes that govern who leads STAUTW, and how STAUTW leaders are selected and held accountable for their actions
- A way to move from the colonial Indian Act rules and processes towards ones that align better with the customs, traditions, and values of the STAUTW people
- **Haven't we done this before???**
  - Lack of Community involvement
  - Lack of clarity regarding process

**Council  
Accountability  
Processes**

**C & C  
Meetings Rules  
and Procedures**

**Council  
Composition**

**Term in Office**

**Eligibility to be  
on Council**

**Nominations,  
Elections and  
Appeals**





# Strengths of a Custom Election Law

Made by the  
Nation

Band can choose  
how far to move  
from the Indian  
Act; a little or a  
lot

It's not as intense  
as implementing  
an entire self-  
governance  
structure

It's a form of  
self-government  
that can reflect as  
much or as little  
of a nation's own  
laws, cultures  
and values

Under the *Indian Act*, a common issue is that Chief and Council don't have the power to make decisions, but a lot of power over their own people

- The lines of accountability can be blurry

Custom Election Laws can diffuse this power by giving authority to things like **elders' councils, custom councils or independent tribunals** that review council decisions

# Limits on the Development of a Custom Election Law

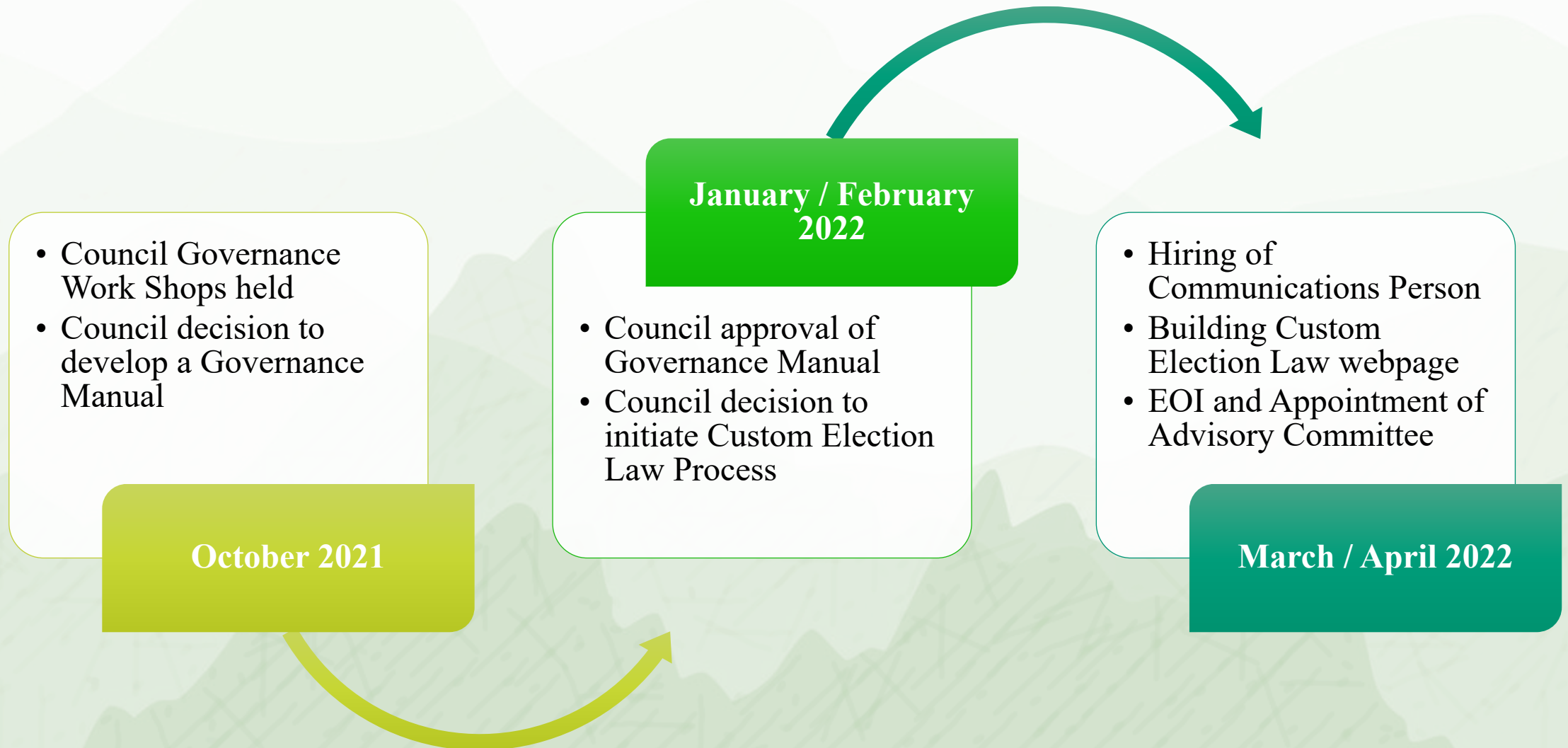
## If the Custom Election Law violates Human Rights, there could be a court challenge

- There are 11 grounds protected by the **Canadian Human Rights Act**- race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability and a conviction for which a pardon has been granted.
- Section 15 of the **Charter of Rights and Freedoms** also guarantees a right to equality to persons in their interactions with government officials - Band Councils are considered government officials for the purpose of the Charter
- If there are human rights issues in the Custom Election Law, the Minister may not remove the S.74 Order that requires Tsawout to be under the Indian Act (\*It is possible to justify a human rights violation, but that justification needs to be clearly set out in the Custom Election Law)

## Fairness must be provided for:

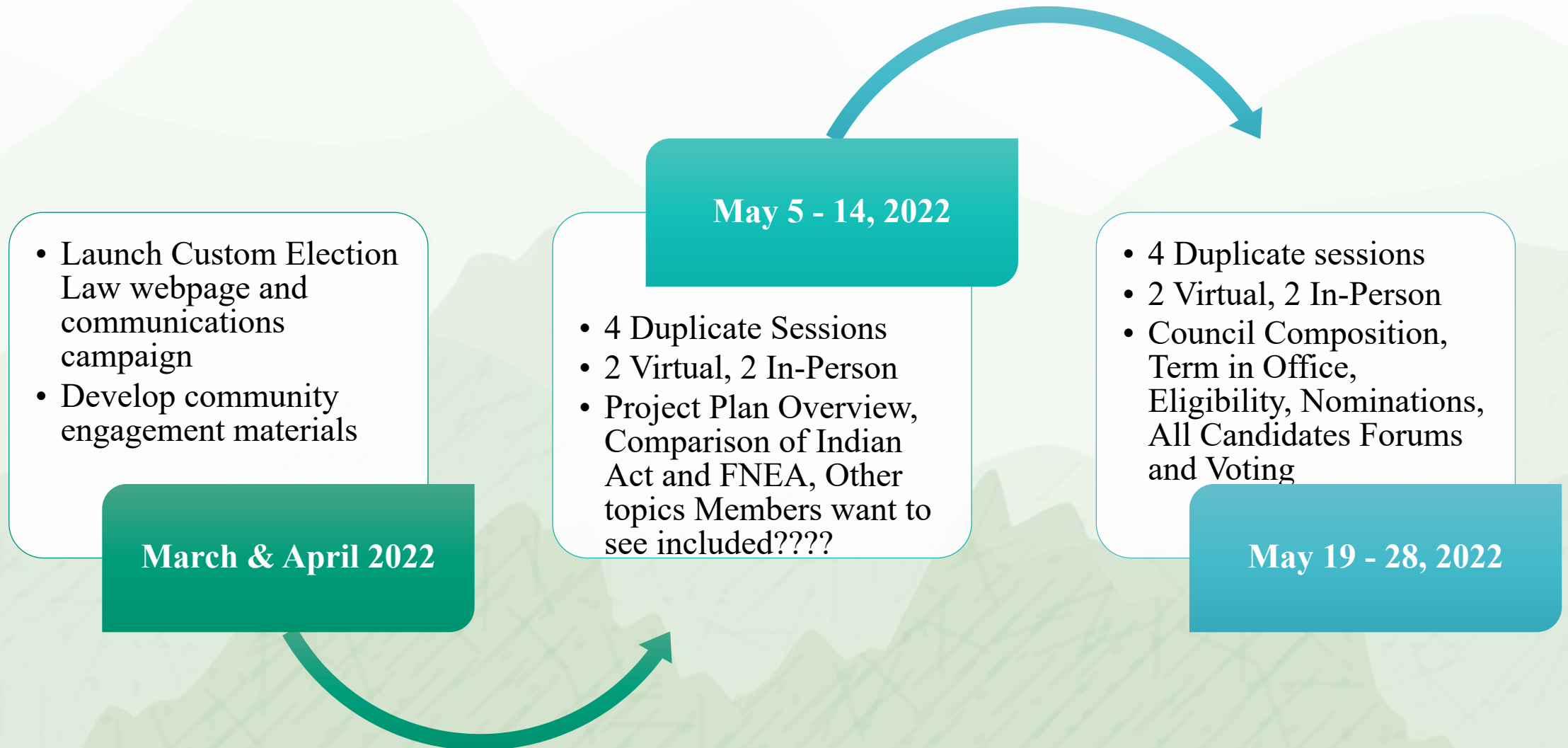
- Administrative Law is an area of law that developed over the years to ensure that governments provide **fairness** in their dealings with the public. This area of law applies to Band Councils.
- If fairness is not provided for, the Minister will not remove the S.74 Order that requires Tsawout to be under the Indian Act

# S7ÁUTW Path to a Custom Election Law

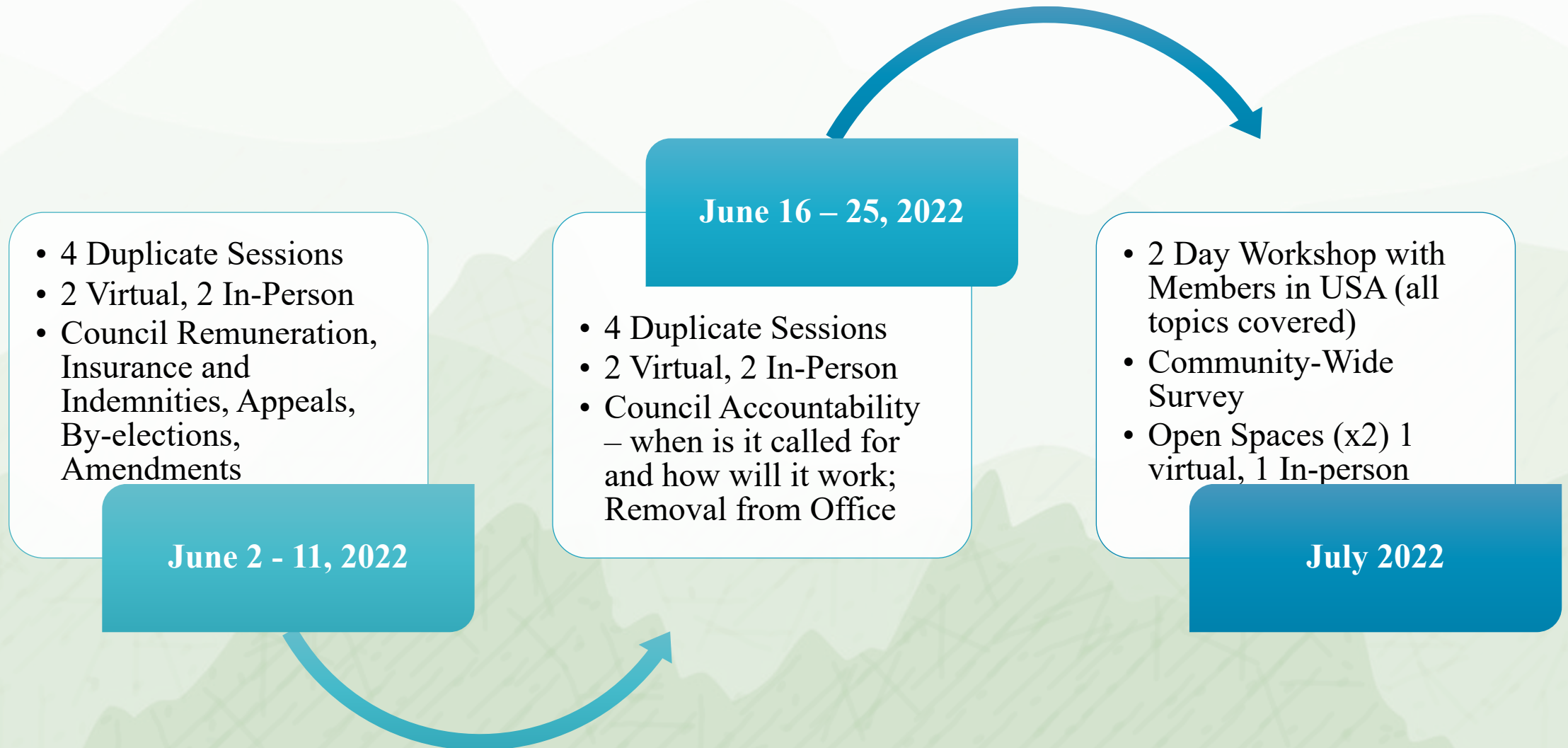




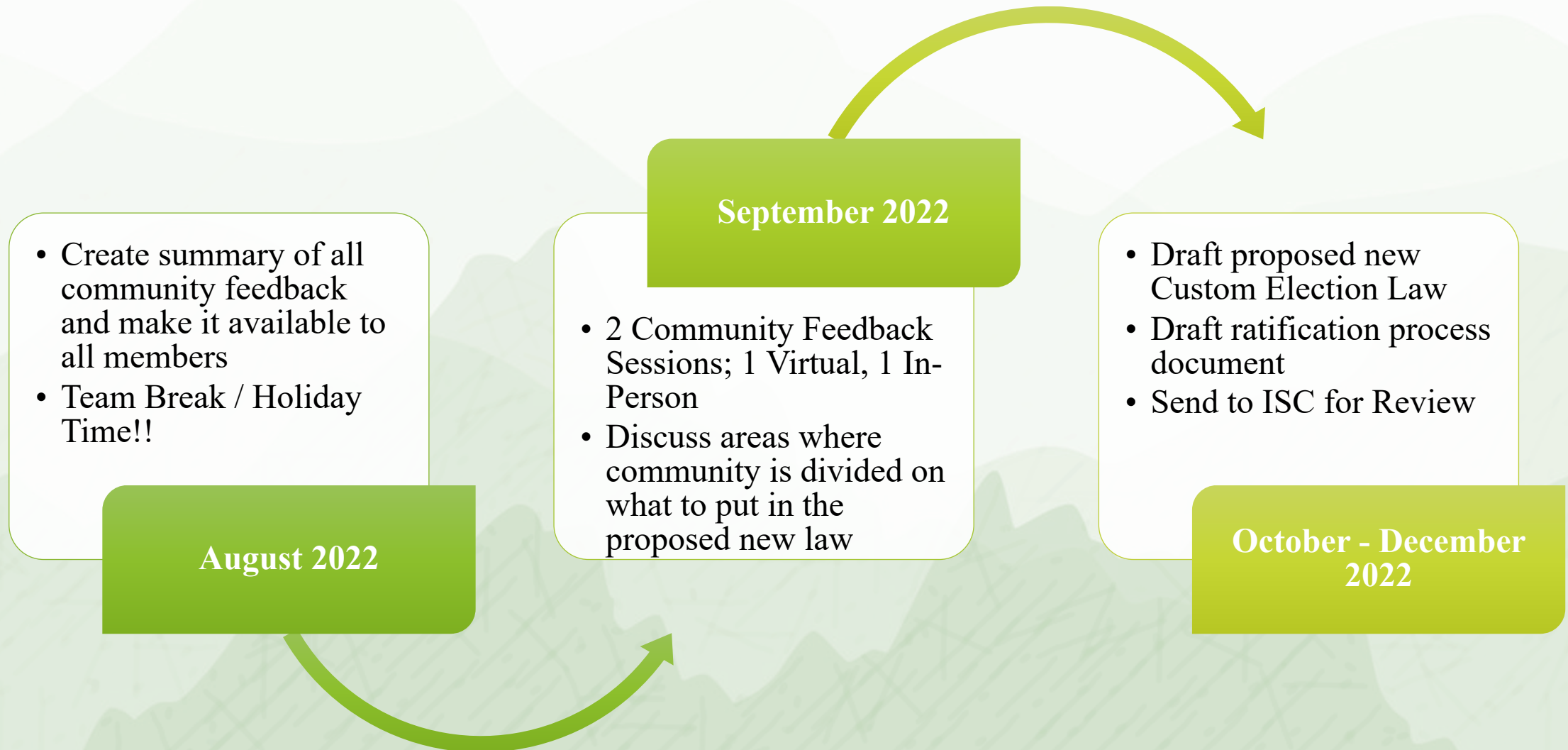
# SṪÁUTW Path to a Custom Election Law



# STÁUTW Path to a Custom Election Law

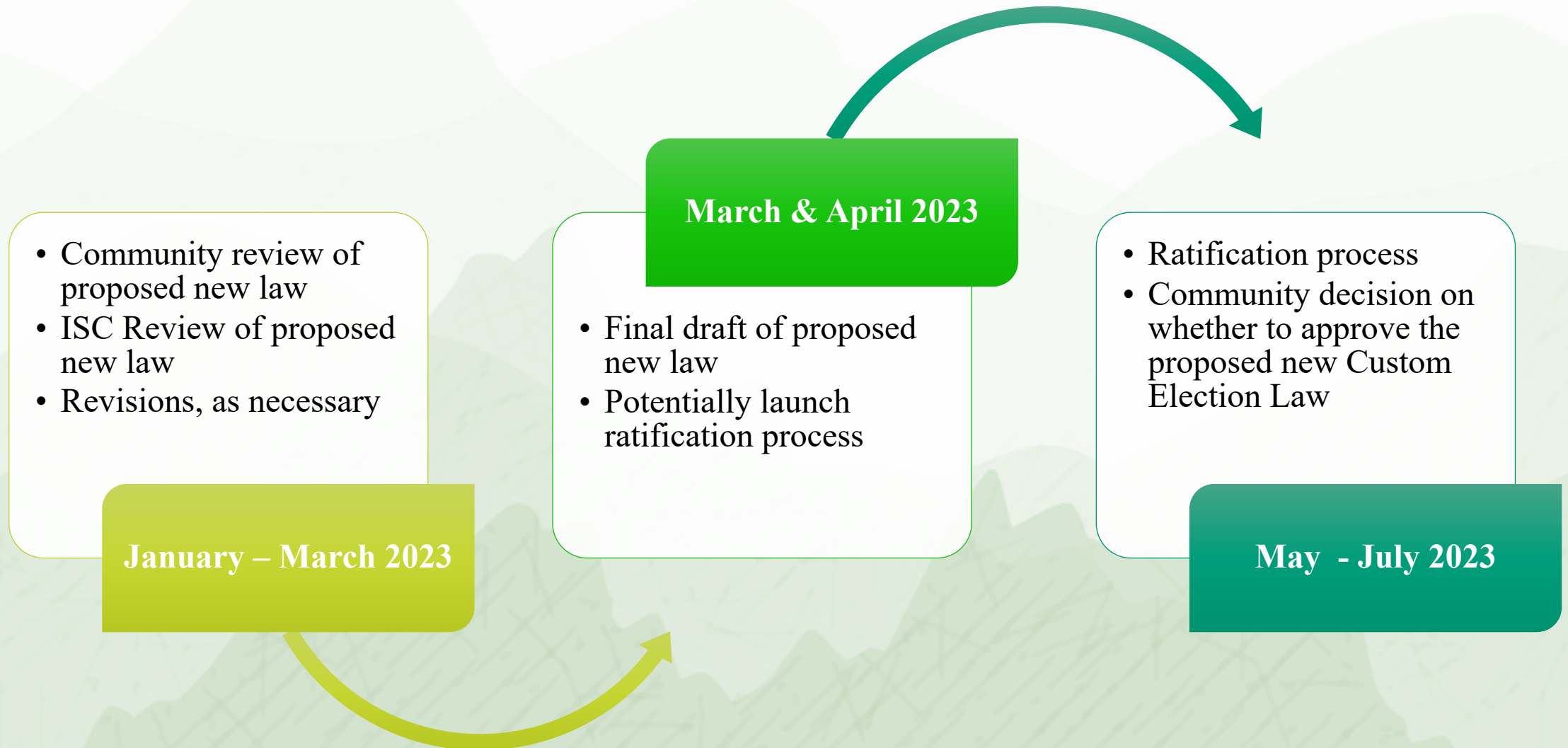


# STÁUTW Path to a Custom Election Law





# SXÁUTW Path to a Custom Election Law



The background of the slide features a stylized, layered mountain range in various shades of green. The mountains are rendered with soft, rounded peaks and some areas have a fine, diagonal line texture. The overall aesthetic is clean and modern.

# Questions

Does anyone have questions about what a Custom Election Law is or isn't?