O'CONNELL, J., dissenting. I cannot agree with the majority because without a transcript of the proceedings before the attorney trial referee (referee), it was impossible for the trial court to determine whether there was sufficient evidence to support the referee's findings and recommendation.[1] It is well settled that "[i]t is impossible for a reviewing court, without a transcript, to determine whether the subordinate facts found by [a referee] are supported by the evidence. (Internal quotation marks omitted.) *John M. Glover Agency* v. *RDB Building, LLC*, 60 Conn. App. 640, 646, 760 A.2d 980 (2000), citing *Meadows* v. *Higgins*, 249 Conn. 155, 170 n.10, 733 A.2d 172 (1999). Furthermore, "[i]t is inherently unfair to ask this court to rule on the propriety of the trial court's judgment and to provide this court with information that was not before the trial court. For this court to review the transcript and judge the trial court's decision is appeal by ambuscade, a practice to which we do not adhere . . . unless a manifest injustice would otherwise occur." (Citation omitted.) *John M. Glover Agency* v. *RDB Building, LLC*, supra, 646–47. The fact that the plaintiff furnished a transcript to this court is irrelevant. We must decide this appeal on what was before the trial court.

The plaintiff's action was not based on an express contract in which he and the defendant had contracted for compensation at an agreed rate per hour for services rendered. The theory of the plaintiff's action was quantum meruit for the value of his services.

The referee found that the plaintiff reasonably spent 100 hours in connection with his representation of the defendant. The majority concludes that this finding is inconsistent with the referee's finding that the plaintiff did not keep time records. I do not believe that the findings are inconsistent. It was not necessary for the plaintiff to keep time records to estimate the time he spent. The referee's finding is supported by the plaintiff's testimony that he ''spent more than 100 hours'' on the case.[2] The referee also made extensive findings concerning the plaintiff's legal experience and the novelty of the case. See Rules of Professional Conduct 1.5.[3] ''[I]t is well established that the evaluation of a witness' testimony and credibility is wholly within the province of the trier of fact.'' (Internal quotation marks omitted.) *Opotzner* v. *Bass*, 63 Conn. App. 555, 564–65, 777 A.2d 718, cert. denied, 257 Conn. 910, A.2d (2001). Furthermore, without a transcript, the trial court could not know what other evidence might have supported that finding.[4]

I acknowledge that the referee found that there was no testimony regarding the plaintiff's estimate of the value of his services on an hourly basis. I question the significance of that finding because, as I have stated, the plaintiff was not suing for compensation on an hourly basis, but in quantum meruit for the reasonable value of his services. He did not allege an hourly rate and now is being penalized for failing to prove something that he did not allege. Furthermore, without a transcript, the trial court could not know what evidence, if any, the referee relied on in arriving at her recommendation that he be awarded $27,500 computed at $275 per hour. If the defendant wanted to persuade the trial court that there was no evidence to support the $275 per hour rate, it was the defendant's burden to furnish a transcript demonstrating that there was no evidence whatsoever to support that recommendation. Lack of testimony from the plaintiff does not rule out evidence having been produced from some other source.

Accordingly, it is my opinion that the defendant sustained his burden and the trial court properly rendered judgment on the referee's report. Even if the majority could convince me that there was an inconsistency between the finding and the recommendation, I would not be convinced that a reversal and rendition of judgment for the defendant is warranted. Instead, I would remand the appeal to the trial court to take appropriate action under Practice Book § 19-17.[5]

For the foregoing reasons, I respectfully dissent.

[1] The referee made, in part, the following findings:

“(5) The plaintiff, according to his testimony, spent more than 100 hours pursuing the novel arguments made in the appeal. . . .

“(6) Attorney Shapero researched the law and in addition to presenting his arguments to the Corporation Counsel’s office, also presented his arguments on the record in an effort to move negotiations forward with the City of Stamford.

“(7) Attorney Shapero reasonably spent 100 hours in connection with his representation of the defendant.

“(8) Attorney Shapero did not keep time records on the matter.

* * *

“(13) The fact finder recognizes that the ‘value added’ choice of the plaintiff to handle the defendant’s tax matters involved the recognition of the plaintiff’s notable service as probate judge and as Corporation Counsel with the City of Stamford and other public boards and agencies and his lifelong service to the community and to the legal profession. . . .

“(15) The fact-finder accepts the argument of plaintiff’s counsel that it is reasonable to accept the testimony that 100 hours was spent in pursuit of the defendant’s matters and that there was a value added to the defendant as a result of the plaintiff’s standing in the legal community.

“(16) The fact-finder does not believe that an hourly rate of compensation of $500.00 per hour is a reasonable rate of compensation, regardless of the standing of plaintiff in the legal community. Given the criteria set forth in Rules of Professional Conduct Rule 1.5, this fact finder specifically finds that

“There is an element of novelty to plaintiff’s presentation to the tax assessor regarding the assessment method and the list year in question;

“The defendant is very active in a wide variety of commercial matters and the plaintiff would have been precluded from representation of others who may have been in an adversary position to the defendant

“The tax appeal process requires attention to detail and is expedited on the docket

“The plaintiff was deprived of the opportunity to have recovered on a contingent fee basis and there was no evidence that the plaintiff breached his obligation to the defendant

“(17) The fact-finder recommends that an hourly rate of $275.00 per hour is reasonable under the circumstances.’’

[2] See footnote 1.

[3] Rule 1.5 of the Rules of Professional Conduct provides in relevant part:

“(a) A lawyer’s fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

“(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

“(2) The likelihood, if made known to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

“(3) The fee customarily charged in the locality for similar legal services;

“(4) The amount involved and the results obtained;

“(5) The time limitations imposed by the client or by the circumstances;

“(6) The nature and length of the professional relationship with the client;

“(7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and

“(8) Whether the fee is fixed or contingent. . . .’’

[4] It is instructive to note that Practice Book § 19-14 now requires a party filing an objection to a report to file a transcript of the evidence. That requirement was originally contained in Practice Book § 19-13, which was repealed effective January 1, 2000. The requirement of filing a transcript was resurrected and added to § 19-14, effective January 1, 2001. (The defendant’s objection to the acceptance of the referee’s report was filed in June, 2000.) I can offer no explanation as to why that requirement was omitted for one year, but it is clear that the appeal was filed during the one year window when the Practice Book transcript requirement seemed to be in abeyance.

[5] Practice Book § 19-17 provides in relevant part: “(a) The court shall render such judgment as the law requires upon the facts in the report. If the court finds that the . . . attorney trial referee has materially erred in its rulings or that there are other sufficient reasons why the report should not be accepted, the court shall reject the report and refer the matter to the same or another . . . attorney trial referee . . . for a new trial or revoke the reference and leave the case to be disposed of in court.

“(b) The court may correct a report at any time before judgment upon the written stipulation of the parties or it may upon its own motion add a fact which is admitted or undisputed or strike out a fact improperly found.’’